6 T.C. 313 (1946)

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When a corporation acquires property in a reorganization, it can only use the transferor's basis for depreciation and depletion if the same persons maintain a 50% or more interest or control in the property immediately after the transfer; mere creditor status is insufficient to demonstrate such control.

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Summary

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Lehigh Metals Co. acquired mining properties from a trustee who purchased them at a receiver's sale of American Silver Corporation. Lehigh issued prior lien notes and stock to American's creditors and new investors. The Tax Court addressed whether Lehigh could use American's cost basis for depreciation and depletion. The court held that Lehigh could not because the former owners of American did not maintain the requisite 50% control in Lehigh after the transfer. The issuance of debt did not constitute control, and the majority of stock was held by the trustee for promotional services, not by the former owners.

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Facts

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American Silver Corporation entered receivership. William Weatherby, acting as trustee, acquired American's assets at a receiver's sale using assigned claims and new capital. Weatherby transferred the assets to Lehigh Metals Co., a newly formed corporation. In exchange, Lehigh issued prior lien notes to American's creditors and new investors, along with a small amount of common stock as a bonus. Weatherby received a large amount of Lehigh's stock for his promotional services.

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Procedural History

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The Commissioner of Internal Revenue determined deficiencies in Lehigh's income and excess profits taxes, arguing that Lehigh's basis for depreciation and depletion was its cost, not the cost to American. Lehigh appealed to the Tax Court, arguing that it was entitled to use American's cost basis because the acquisition was a reorganization and the former owners maintained sufficient control.

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Issue(s)

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Whether Lehigh Metals Co. could use the cost basis of its transferor, American Silver Corporation, for determining depreciation and depletion, based on section 113(a)(7) of the Revenue Act of 1938, which requires that immediately after the transfer, an interest or control in the property of 50% or more remained in the same persons.

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Holding

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No, because immediately after the transfer, an interest or control in such property of 50% or more did not remain in the same persons who had an interest or control in American Silver Corporation. The prior lien notes did not give their holders any

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