8 T.C. 442 (1947)

A formal written plan is not strictly required to establish a "plan of liquidation" under Section 112(b)(6) of the Internal Revenue Code; the existence of such a plan can be inferred from the actions and resolutions of the directors and stockholders, as well as relevant state law.

Summary

Burnside Veneer Co. sought to deduct a long-term capital loss from its 1941 taxes following the liquidation of Glanton Veneer Co., of which Burnside owned over 80% of the stock. The Commissioner disallowed the deduction, arguing that the liquidation qualified as a tax-free liquidation of a subsidiary under Section 112(b)(6) of the Internal Revenue Code. The Tax Court agreed with the Commissioner, holding that despite the lack of a formal written plan, a plan of liquidation existed based on the actions and intent of Glanton's directors and stockholders, combined with the relevant North Carolina statutes governing corporate dissolution. Because a valid liquidation plan existed, no loss could be recognized.

Facts

Burnside Veneer Co. owned 655 of the 810 outstanding shares of Glanton Veneer Co. Glanton suffered a fire in 1937, destroying most of its operating properties. On September 23, 1937, Glanton's board of directors resolved to dissolve the corporation under North Carolina law. All stockholders provided written consent to the dissolution, filed on October 4, 1937. The Secretary of State of North Carolina issued a final certificate of dissolution on December 28, 1937. Distributions in liquidation were made to shareholders between 1937 and 1941. Burnside claimed a long-term capital loss on its 1941 return, representing the difference between its cost basis in Glanton stock and the distributions received. S.J. Glanton was a director for both companies at different times and also held officer positions within Burnside Veneer Co.

Procedural History

Burnside Veneer Co. deducted a capital loss on its tax return. The Commissioner of Internal Revenue disallowed the deduction. Burnside petitioned the Tax Court for review of the Commissioner's determination.

Issue(s)

Whether the liquidation of Glanton Veneer Co. was conducted pursuant to a "plan of liquidation" as defined in Section 112(b)(6) of the Internal Revenue Code, such that no gain or loss should be recognized by Burnside Veneer Co., the controlling shareholder.

Holding

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No, because the actions of Glanton's directors and stockholders, combined with North Carolina law, demonstrated a clear intent and process for liquidation, which satisfies the requirements of a liquidation plan under Section 112(b)(6), despite the absence of a formal written plan.

Court's Reasoning

The court reasoned that while Section 112(b)(6) requires a "plan of liquidation," it does not mandate a formal, written document. Referencing Mertens Law of Federal Income Taxation, the court stated, "the absence of a formal written plan should not be fatal if there exists in fact a purpose to liquidate which is accomplished." It relied on prior cases interpreting "bona fide plan of liquidation" under Section 115(c) of the Code, finding that those cases did not require a formal plan. The court emphasized that the intent to liquidate was evident in the directors' resolution, the stockholders' unanimous consent, and their actions in winding up the company's affairs. Furthermore, the resolution referenced Section 1182 of the North Carolina Code, which outlines the process for corporate dissolution. The court held that this reference, combined with the directors' actions, satisfied the requirements of a liquidation plan, even though the plan did not explicitly state a period for completing the transfer of property. The court dismissed Burnside's argument that Glanton failed to meet certain regulatory requirements, holding that those regulations were designed to ensure revenue collection and could be waived in this case, as the distribution already occurred. The court stated, "It is our holding in this case that the regulations of the Commissioner are not controlling and that the law in the Roach and Hardart Baking Co. cases clearly declares that in the case at bar there was a plan of liquidation within the purview of the terms of section 112 (b) (6) of the code."

Practical Implications

This case clarifies that a formal, written plan is not always required for a liquidation to qualify under Section 112(b)(6). Attorneys and tax advisors should analyze the totality of the circumstances, including corporate resolutions, shareholder actions, and relevant state laws, to determine whether a plan of liquidation exists. The decision provides flexibility in structuring corporate liquidations, particularly in situations where a formal plan was not initially documented. It emphasizes substance over form, focusing on the intent and actions of the parties involved. However, the dissent in the case highlights the importance of following Treasury Regulations in order to ensure compliance with tax law.

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