10 T.C. 402 (1948)

A tentative tax return that does not state items of income, deductions, and credits is not a sufficient return to start the running of the statute of limitations for claiming a refund of overpaid taxes.

Summary

Southern Sportswear Co. filed tentative income and excess profits tax returns, paying estimated taxes. Later, it filed a completed income tax return showing a loss and stating no excess profits tax return was being filed. The Commissioner later issued a deficiency notice. The Tax Court addressed whether a refund of the excess profits tax payment, made more than two years before the deficiency notice, was barred by the statute of limitations. The court held that the tentative return was insufficient to trigger the limitations period, and the refund was time-barred, as was a claim that filing an income tax return would suffice.

Facts

Southern Sportswear Co. (Petitioner) filed tentative income and excess profits tax returns, Forms 1120 and 1121, for the year ended February 28, 1943, estimating income tax of $900 and excess profits tax of $9,000. It paid $225 and $2,250, respectively, as the first quarterly payments. Later, Petitioner filed a completed income and declared value excess profits tax return showing a loss and stating that no excess profits tax return was being filed.

Procedural History

The Commissioner mailed a deficiency notice disclosing deficiencies in income tax and excess profits tax, plus a penalty. The Petitioner filed a petition with the Tax Court, alleging errors in the deficiencies and penalty and requesting a determination of overpayment of taxes. The Commissioner conceded certain adjustments, reducing the income tax deficiency and eliminating the excess profits tax deficiency. The primary issue before the Tax Court was whether the petitioner was entitled to a refund of an erroneous excess profits tax payment.

Issue(s)

1. Whether a tentative excess profits tax return, lacking details of income, deductions, and credits, is a sufficient return to start the statute of limitations running for a refund claim under Section 322(d) of the Internal Revenue Code.
2. Whether a completed income and declared value excess profits tax return, which states that no excess profits tax return is being filed, can be considered an excess profits tax return for statute of limitations purposes.

Holding

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1. No, because a tentative return that does not state the items of income, deductions, and credits is not the return required by law and does not start the running of the statute of limitations.
2. No, because the law requires separate and complete returns for each type of tax, and filing an income tax return does not start the running of the statute of limitations for an excess profits tax liability.

Court's Reasoning

The court relied on 26 U.S.C. § 322, which outlines the limitations on allowance for tax refunds. Since the payment was made more than two years but less than three years before the deficiency notice, the critical question was whether the deficiency notice was mailed within three years from the time "the return" was filed. The court cited *Florsheim Bros. Drygoods Co. v. United States, 280 U.S. 453*, holding that a tentative return showing only the taxpayer's name, address, and estimated tax is insufficient to start the statute of limitations. The court rejected the argument that a tentative return could be valid for refund purposes but invalid for assessment purposes, stating that such a distinction would cause "endless confusion." Regarding the completed income tax return, the court cited *Rockland & Rockport Lime Corporation v. Ham, 38 Fed. (2d) 239*, stating that the filing of an income tax return does not start the statute of limitations for excess profits tax. The court emphasized the explicit legal requirement for separate and complete returns for each tax type.

The court also rejected the petitioner's argument regarding section 3807(b), noting that income tax and excess profits tax are not

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