Mojonnier & Sons, Inc. v. Commissioner, 12 T.C. 876 (1949)

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When property is transferred to a corporation in exchange for stock, whether the transferors had ‘control’ (80% ownership) of the corporation immediately after the exchange determines if the corporation’s basis in the property is its cost or the transferors’ basis.

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Summary

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Mojonnier & Sons, Inc. argued that it should be able to use the fair market value of assets transferred to it at its formation as its equity invested capital for tax purposes. The Commissioner argued that Mojonnier should instead use the adjusted cost basis of the assets in the hands of the transferors (the Mojonniers). The Tax Court determined that the transferors did not have “control” of the corporation immediately after the transfer because they owned less than 80% of the stock. Therefore, the exchange was taxable, and Mojonnier could use the fair market value of the assets at the time of transfer, which the court found to be $195,000, in calculating its equity invested capital.

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Facts

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- F.E. Mojonnier and his wife operated a greenhouse and produce business.

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- Prior to incorporating, they promised stock in the future corporation to their son, Harold, and son-in-law, Lewis, if they worked in the family business.

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- In 1930, the corporation was formed. Mojonnier and his wife transferred real property and other assets to the corporation.

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- In exchange, shares were issued to Mojonnier, his wife, their son Harold, their daughter Claire (Felch's wife), their son-in-law Lewis Felch, and their foreman F.A. Hills. The remaining shares were held as treasury stock.

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- Mojonnier and his wife owned 74.5% of the outstanding stock after the transfer.

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Procedural History

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- The Commissioner determined a deficiency in Mojonnier & Sons, Inc.'s excess profits tax for 1942 and 1943.

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- The Commissioner argued Mojonnier & Sons, Inc. was required to use the adjusted cost basis of the assets in the hands of the transferors (the Mojonniers), and that the Petitioner was estopped from claiming a stepped-up basis.

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- Mojonnier & Sons, Inc. petitioned the Tax Court for a redetermination.

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Issue(s)

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1. Whether the transferors had “control” of the corporation immediately after the transfer of assets in exchange for stock, as defined in Section 112(b)(5) and (j) of the Revenue Act of 1928.

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2. Whether Mojonnier & Sons, Inc. is estopped from claiming that the 1930 transaction constituted a taxable exchange because the transferors did not report a gain on the transfer.

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3. What was the fair market value of the assets acquired by Mojonnier & Sons, Inc. on February 26, 1930, for the purpose of computing its equity invested capital?

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Holding

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1. No, because the transferors (Mojonnier and his wife) owned less than 80% of the corporation’s stock immediately after the transfer; therefore, they did not

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