13 T.C. 486 (1949)

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For purposes of calculating the excess profits tax credit, transactions must be analyzed in their entirety to determine whether they qualify as tax-free exchanges between corporations under Section 750(a) of the Internal Revenue Code.

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Summary

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Tennessee, Alabama & Georgia Railway Company (TAG) sought to use the excess profits credit based on invested capital, arguing it would result in a lesser tax liability than using the credit based on income. The Tax Court addressed whether a series of transactions in 1937 constituted a tax-free exchange between corporations, thus triggering Section 751 of the Internal Revenue Code. The court held that the 1937 transactions, involving a syndicate, an insolvent railroad (Georgia), and TAG, did not qualify as a tax-free exchange between corporations. Therefore, TAG's invested capital should be determined under Sections 718(a) and 719, not Section 751.

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Facts

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A syndicate, the principal creditor and sole stockholder of an insolvent railroad corporation named Georgia, forgave Georgia's debt and transferred its Georgia stock, along with miscellaneous assets, to TAG, a newly formed corporation, in exchange for TAG's stock, bonds, and stock subscription rights in November 1937.

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Subsequently, Georgia transferred all of its assets and current liabilities to TAG in exchange for the surrender of Georgia's capital stock for cancellation in December 1937.

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TAG sought to calculate its excess profits tax credit based on invested capital for

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1940 and 1941.

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Procedural History

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The Commissioner of Internal Revenue determined deficiencies in TAG's excess profits tax for 1940 and 1941. TAG challenged the Commissioner's determination, arguing that the excess profits credit based on invested capital should be used, resulting in a lower tax liability.

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Issue(s)

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1. Whether the 1937 transactions constituted an exchange described in Section 750(a) of the Internal Revenue Code, thus requiring the determination of TAG's equity invested capital and borrowed capital under Section 751.

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2. If Section 751 does not apply, how should TAG's equity invested capital be computed under Section 718(a)(2) concerning property paid in for stock?

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3. Is TAG entitled to increase its equity invested capital under Section 718(a)(5) due to a gain on a tax-free liquidation?

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Holding

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1. No, because the 1937 transactions did not constitute an

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