13 T.C. 674 (1949)

An insolvent bank is not exempt under Section 3798 of the Internal Revenue Code from transferee liability for the unpaid income tax of a corporation whose assets it received as a stockholder.

Summary

New Jersey Title Guarantee & Trust Co., an insolvent state bank, was deemed the transferee of assets from New York Mutual Telegraph Co. and was assessed a deficiency for the telegraph company's unpaid income tax. The bank argued it was exempt from this transferee liability under Section 3798 of the Internal Revenue Code, which provides tax exemptions for insolvent banks to protect their depositors. The Tax Court held that the exemption in Section 3798 only applies to taxes directly imposed on the insolvent bank itself, not to secondary liabilities like transferee liability for another entity's taxes, even if paying that liability would diminish assets available to depositors.

Facts

Prior to February 14, 1939, New Jersey Title Guarantee & Trust Co. engaged in general banking, accepting deposits, and making loans.
The New Jersey Commissioner of Banking and Insurance took possession of the bank's assets for liquidation due to insolvency.
Among the assets were 100 shares of stock in New York Mutual Telegraph Co., originally held by Bank of Lafayette (which had merged with New Jersey Title Guarantee).
A 1883 agreement stipulated that Western Union Telegraph Co. leased New York Mutual Telegraph Co.'s system and paid $150,000 annually to New York Mutual Telegraph Co.'s stockholders, including $150 to Bank of Lafayette in 1930.
New York Mutual Telegraph Co. had no assets to pay its 1930 income tax assessment. The IRS sought to collect this tax from New Jersey Title Guarantee as the transferee of assets from Bank of Lafayette, a New York Mutual Telegraph Co. stockholder.

Procedural History

The Commissioner of Internal Revenue issued a notice of deficiency to the Bank of Lafayette (c/o petitioner) for the unpaid income tax of New York Mutual Telegraph Co.
The Tax Court was asked to determine if the petitioner, as an insolvent bank, was exempt from transferee liability under Section 3798 of the Internal Revenue Code.

Issue(s)

Whether Section 3798 of the Internal Revenue Code exempts an insolvent bank from transferee liability for the unpaid income tax of another entity, specifically a

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corporation in which the bank held stock, when payment of that liability would reduce assets available for the bank's depositors.

Holding

No, because Section 3798 only exempts insolvent banks from taxes assessed directly against them, not from secondary liabilities such as transferee liability for the taxes of another entity, even if paying that liability would diminish assets available to depositors.

Court's Reasoning

The court reasoned that transferee liability, as established in Section 311 of the Revenue Act of 1928, is a secondary liability, not a primary one. It arises from the

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