***14 T.C. 290 (1950)***

To qualify as an “acquiring corporation” under Section 740(a)(1)(D) of the Internal Revenue Code and utilize a predecessor’s net income experience for excess profits tax credit, a corporation must acquire substantially all of the predecessor’s properties solely in exchange for stock, not for the satisfaction of personal indebtedness.

**Summary**

A.C. Burton, owner of a sole proprietorship, formed a corporation. He subscribed to all the stock and initially paid half in cash. Shortly after, he withdrew a substantial sum, applying it to an outside debt. Later, the proprietorship’s assets were transferred to the corporation, with a portion used to offset Burton’s withdrawal. The Tax Court ruled the corporation didn’t acquire substantially all proprietorship assets for stock. Therefore, it was not an acquiring corporation under Section 740(a)(1)(D) of the Internal Revenue Code, thus impacting its excess profits tax credit calculation.

**Facts**

A.C. Burton operated a sole proprietorship, A.C. Burton & Co., dealing in automobiles. In June 1940, Burton formed a corporation under the same name. Burton subscribed for 900 shares, and two employees subscribed for 50 shares each, totaling $100,000 in capital stock. On June 4, 1940, Burton deposited $50,000 into the corporation’s bank account. On June 24, 1940, half the stock was issued. On June 25, 1940, Burton withdrew $49,000 from the corporation, using it to pay a debt of Burton Realty Co., which he guaranteed. On July 1, 1940, the proprietorship’s assets were transferred to the corporation. Of the net assets, $49,000 offset Burton’s withdrawal, $50,000 covered unpaid stock subscriptions, and $3,124.08 was credited to Burton’s drawing account.

**Procedural History**

The Commissioner of Internal Revenue determined deficiencies in A.C. Burton & Co.’s excess profits tax for 1942 and 1943. The corporation had computed its excess profits credits based on the net income experience of the proprietorship from 1936-1939. The Commissioner determined the corporation was not an

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