14 T.C. 1217 (1950)

A corporation that sells its principal assets but continues operating a portion of its business without liquidating is entitled to carry back unused excess profits credits, and property taxes can be accrued monthly if consistently applied.

Summary

Whitney Manufacturing Company sold its textile manufacturing assets in 1942 but continued to operate a company store. The Tax Court addressed two issues: whether the company could deduct South Carolina property taxes accrued monthly rather than in a lump sum, and whether it could carry back unused excess profits credits from 1943 and 1944 to 1942. The court held that the company could accrue property taxes monthly and was entitled to the excess profits credit carry-back because it continued as a viable corporation and had not entered liquidation.

Facts

Whitney Manufacturing Company, a South Carolina corporation, manufactured textiles until March 3, 1942, when it sold its principal assets due to creditor pressure. However, it retained and continued to operate a company store. The company used an accrual accounting method and consistently accrued property taxes on a month-to-month basis. The company did not dissolve after selling its textile business, nor did it make any liquidating distributions to its stockholders. The proceeds from the sale were used to pay debts.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Whitney Manufacturing Company's income and excess profits taxes for 1942. The Commissioner disallowed the deduction of property taxes accrued monthly and the carry-back of unused excess profits credits from 1943 and 1944. Whitney Manufacturing Company petitioned the Tax Court for review. The Tax Court ruled in favor of the petitioner, allowing both the monthly accrual of property taxes and the carry-back of excess profits credits.

Issue(s)

1. Whether the Commissioner erred in disallowing the deduction of South Carolina property taxes accrued monthly?
2. Whether Whitney Manufacturing Company is entitled in 1942 to a carry-back of unused excess profits credits from 1943 and 1944?

Holding

1. Yes, because the company consistently used the monthly accrual method, which is a sound accounting practice recognized in several cases.

2. Yes, because the company continued its corporate existence and operated a portion of its business, and it was not in the process of liquidation during the carry-back years.

Court's Reasoning

The court reasoned that accruing property taxes monthly was a sound accounting practice, citing *Citizens Hotel Co. v. Commissioner*, 127 Fed. (2d) 229, among other cases. The court rejected the Commissioner's argument that the company was estopped from protesting the adjustment because it had not contested similar adjustments in prior years, noting that there was no misrepresentation or benefit gained by the company. Regarding the excess profits credit carry-back, the court distinguished this case from *Wier Long Leaf Lumber Co.*, emphasizing that Whitney Manufacturing Company had not dissolved, made liquidating distributions, or ceased to operate a portion of its business. The court noted, "On the facts disclosed by the evidence here, it can not be said that petitioner in 1943 and 1944 was a corporation in name only and without corporate substance. It was in every sense a real corporation with a going business." Citing *Bowman v. Glenn*, 84 Fed. Supp. 200, the court emphasized that continuing corporate existence allowed the carry-back. The court concluded that the company was entitled to the carry-back because it had not liquidated and continued to operate its store.

Practical Implications

This case clarifies that a corporation that sells its principal assets but maintains a continuing business operation is still eligible for excess profits credit carry-backs. It emphasizes that the key factor is whether the corporation is in liquidation or has effectively ceased to exist as a going concern. For tax practitioners, this means that they must examine the specific facts of each case to determine whether the corporation is truly liquidating or is simply restructuring its business. Furthermore, the case supports the permissibility of accruing property taxes on a monthly basis for accrual basis taxpayers, provided this method is consistently applied. The case also demonstrates that the IRS cannot retroactively force a taxpayer to change an accounting method without proving the taxpayer gained a benefit.