14 T.C. 1320 (1950)

Under the Renegotiation Act of 1943, two business entities are considered under "common control" if they have overlapping ownership and management, allowing aggregation of their contracts for jurisdictional purposes in determining excessive profits from war contracts, but this does not mandate the consolidation of their income, costs, and profits for renegotiation purposes.

Summary

Warner Welded Products, a partnership, was found by the War Contracts Price Adjustment Board to have excessive profits from renegotiable contracts. The Tax Court addressed whether the partnership and Warner Manufacturing Co., a corporation, were under "common control," thus allowing aggregation of their contracts to meet the jurisdictional threshold for renegotiation. The court held that common control existed due to overlapping ownership and management by the Warner family. However, the court also determined that the finding of common control for jurisdictional purposes did not require the mandatory consolidation of the two entities' finances for determining excessive profits. The Board's determination of excessive profits for the partnership was ultimately upheld.

Facts

Thomas Warner, Jr. and his sister, Jean Sprague, formed Warner Welded Products, a limited partnership, in 1943, commencing operations in March 1944. Thomas Jr. managed the partnership. The Warner Manufacturing Co., a corporation, was owned by Thomas Warner Sr. (20%), Thomas Jr. (40%), and Jean Sprague (40%). Thomas Jr. was an officer and general manager of the corporation. The partnership and the corporation shared adjoining space in the same building. The corporation handled the partnership's material purchases and bookkeeping, charging commissions for these services. The partnership's sales were primarily to the corporation. The partnership's renegotiable sales for the period were $212,858.25, while the corporation's renegotiable sales exceeded $2,000,000.

Procedural History

The War Contracts Price Adjustment Board determined that Warner Welded Products realized $90,000 in excessive profits from renegotiable contracts. Warner Welded Products petitioned the Tax Court, challenging the Board's jurisdiction and the determination of excessive profits. The Tax Court upheld the Board's determination.

Issue(s)

1. Whether Warner Welded Products and Warner Manufacturing Co. were under "common control" within the meaning of Section 403(c)(6) of the Renegotiation Act of 1943.

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2. If common control existed, whether the Renegotiation Act of 1943 required the Board to aggregate the income and costs of both business enterprises to determine excessive profits.

Holding

1. Yes, because the Warners, father, son, and daughter, owned the entire proprietary interests in both business enterprises and Thomas W. Warner, Jr. controlled the operations of both enterprises.
2. No, because the statute speaks in the disjunctive, addressing contractors or subcontractors separately and not requiring the consolidation of income, costs, and profits of two enterprises under common control before determining if either realized excessive profits.

Court’s Reasoning

The court found that the corporation and the partnership were under common control because the Warner family owned the proprietary interests in both businesses, and Thomas Warner, Jr. managed both entities. The court emphasized that the son’s management of the corporate business was conceded, and the family arrangement through a voting trust could have been terminated at any time. Citing *Flato Realty Investments*, the court indicated that the purpose of the

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