17 T.C. 87 (1951)

A corporation’s taxable year begins on the date of its incorporation, not when pre-incorporation activities occur, unless those activities are conducted by the incorporators as agents of the future corporation.

Summary

Ajax Engineering Corporation argued that its taxable year began before its formal incorporation because it engaged in business activities prior to that date. The Tax Court held that Ajax Engineering’s taxable year began on February 7, 1942, the date of its incorporation. The Court reasoned that the pre-incorporation activities were not conducted by the incorporators as agents or on behalf of the proposed corporation. Instead, they were conducted in the name of Ajax Metal Company. This distinction was critical in determining when the new corporation’s tax obligations commenced.

Facts

Dr. Clamer and Manuel Tama discussed forming a corporation to manufacture electric induction furnaces. They agreed that if they secured sufficient business, particularly an order from Amtorg Trading Corporation, they would form a new corporation, Ajax Engineering Corporation. Ajax Metal Company, controlled by Clamer, agreed to advance funds and allow the use of its name for purchasing goods. Prior to incorporation, the proposed incorporators hired Tama as manager, opened an office, arranged for engineering services, and pursued the Amtorg order. The Amtorg order was ultimately placed in the name of Ajax Metal Company due to concerns about financial assurances. Ajax Engineering Corporation was formally incorporated in New Jersey on February 7, 1942.

Procedural History

Ajax Engineering Corporation filed an excess profits tax return for the period from July 1, 1941, to June 30, 1942, claiming that its taxable year began in 1941. The Commissioner of Internal Revenue determined a deficiency, asserting that the taxable year began on February 7, 1942, the date of incorporation. Ajax Engineering Corporation petitioned the Tax Court for a redetermination.

Issue(s)

Whether Ajax Engineering Corporation’s taxable year began on July 1, 1941, as the corporation contended, or on February 7, 1942, the date of its incorporation, as the Commissioner determined.

Holding

No, because the activities conducted before incorporation were not done by or on

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behalf of the corporation, but rather by the incorporators in the name of Ajax Metal Company.

Court’s Reasoning

The court reasoned that a corporation comes into legal existence when its certificate of incorporation is filed. While pre-incorporation activities occurred, they were not conducted by or on behalf of Ajax Engineering Corporation. The crucial Amtorg order was secured in the name of Ajax Metal Company, not the proposed corporation. The court distinguished this case from *Camp Wolters Land Co. v. Commissioner*, where the incorporators held themselves out as a corporation and acted in the corporation’s name. The court noted that outside parties were seemingly unwilling to do business with the group until Ajax Metal Company was involved and contracted in its own name. As the court stated, “During that part of 1941 when petitioner claims it was doing business it seems to us petitioner was hardly more than a gleam in the eyes of the proposed incorporators.” The court emphasized that no significant action, except for an inquiry regarding a preference rating certificate, was taken in the name of the petitioner before incorporation. Since the pre-incorporation activities were not conducted on behalf of the corporation, the taxable year began on the date of incorporation.

Practical Implications

This case clarifies the importance of correctly identifying the entity conducting business before formal incorporation. It highlights that pre-incorporation activities do not automatically equate to the start of a corporation’s taxable year. The key is whether those activities were conducted by the incorporators as agents for, or on behalf of, the future corporation. Legal professionals should advise clients to clearly document the capacity in which pre-incorporation activities are undertaken. Doing business in the name of another existing entity, as happened here, delays the start of the new corporation’s taxable obligations and impacts tax planning. This decision continues to be relevant in determining the proper start date for tax purposes when a new corporation is formed after business activities have commenced. It emphasizes that the actions and representations of the incorporators are critical in establishing when the corporation’s tax obligations begin.

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