*17 T.C. 357 (1951)*

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Merely increasing the amount of land available for mining does not automatically equate to an increase in 'capacity for production or operation' as defined under Section 722 of the Internal Revenue Code for excess profits tax relief.

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**Summary**

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Jacob's Fork Pocahontas Coal Company sought relief from excess profits taxes under Section 722, arguing that acquiring a new lease in 1939 changed the character of their business by increasing their capacity for production. The Tax Court denied the relief, holding that simply possessing more land for mining doesn't inherently increase a company's capacity for production within the meaning of the statute, which refers to the actual ability to produce within a given timeframe. The court emphasized that the company failed to demonstrate that its plant's capacity increased due to the new lease.

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**Facts**

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Jacob's Fork Pocahontas Coal Company, a coal mining corporation, was organized in 1935. They initially operated under two leases. In the fall of 1939, they acquired a new lease on an adjacent tract of land. They mined approximately 2,200 tons of coal from this new lease in 1939. The company built a tipple with a 250-ton-per-hour capacity in anticipation of acquiring additional land. The company sold most of its coal through a selling agency.

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**Procedural History**

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The Commissioner of Internal Revenue denied the company's claim for relief from

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excess profits taxes for the years 1940, 1941, and 1942 under Section 722 of the Internal Revenue Code. The company petitioned the Tax Court for review.

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**Issue(s)**

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Whether the acquisition of a new mining lease in 1939 constituted a change in the character of the taxpayer's business by increasing its capacity for production or operation under Section 722(b)(4) of the Internal Revenue Code, thereby entitling it to relief from excess profits taxes.

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**Holding**

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No, because merely increasing the amount of land available for mining does not, in and of itself, increase the "capacity for production or operation" as contemplated by Section 722(b)(4). The taxpayer failed to prove that the new lease increased the actual ability of its plant to produce coal within a given timeframe.

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**Court's Reasoning**

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The court reasoned that the phrase

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