18 T.C. 217 (1952)

To be eligible for relief under the 'push-back' rule of Section 722(b)(4) of the Internal Revenue Code, a taxpayer must demonstrate that a change in business character during the base period resulted in an inadequate average base period net income, and that an earlier change would have led to higher earnings than those actually achieved, resulting in a larger excess profits credit.

Summary

Green Spring Dairy sought relief from excess profits taxes under Section 722(b)(4) of the Internal Revenue Code, arguing that the construction of a new plant in 1937 changed its business character. The company claimed that if the plant had been available two years earlier, its earnings would have been significantly higher. The Tax Court denied the relief, holding that Green Spring Dairy failed to prove that the earlier plant availability would have resulted in sufficient earnings to generate excess profits credits exceeding those already utilized. The court emphasized that the dairy's existing credits were substantial and that its growth was not demonstrably hindered by the timing of the plant's construction.

Facts

Green Spring Dairy, established in 1932, processed and distributed milk and dairy products. Its initial plant had a limited capacity. By 1937, growing sales volume prompted the construction of a new, larger plant, completed in September of that year. The company computed its excess profits taxes using the invested capital method but sought to utilize the "push-back" rule, arguing that the delay in the new plant's availability suppressed its base period earnings. Green Spring Dairy asserted that it could have sold 250,000 more gallons of milk each year with the earlier plant, leading to significantly higher net income.

Procedural History

Green Spring Dairy filed applications for relief from excess profits taxes for the years 1940-1945 under Section 722 of the Internal Revenue Code. The Commissioner denied these applications. The Tax Court consolidated the cases (Docket Nos. 7871 and 22807) and reviewed the Commissioner's decision. The core issue was whether the denial of relief under Section 722(b)(4) was proper.

Issue(s)

Whether Green Spring Dairy demonstrated that the construction of its new plant in 1937, rather than two years earlier, resulted in an inadequate average base period net income, thereby entitling it to relief under the

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