***18 T.C. 1143 (1952)***

A taxpayer is estopped from claiming depreciation on properties when the asserted basis is inconsistent with positions taken in prior years, resulting in substantial tax benefits, where allowing the current claim would result in a double tax benefit.

**Summary**

Akron Dry Goods Co. sought to deduct depreciation expenses on several properties and to increase its equity invested capital for excess profits tax purposes. The Tax Court held that the company was estopped from claiming depreciation on certain properties because it had previously taken a contradictory position that resulted in tax benefits. The court found that the taxpayer treated a land trust certificate transaction as a sale and took a loss deduction. Later, the company tried to claim that the transaction was actually a mortgage to take depreciation deductions. The court also found that the cancellation of the company's debt did not increase its equity invested capital for tax purposes. Allowing the changed position would result in an impermissible double tax benefit to the taxpayer.

**Facts**

Akron Dry Goods Co. (petitioner) was an Ohio corporation operating a retail department store. In 1928, the company engaged in a land trust certificate transaction, conveying title to properties to a bank as trustee, which then leased the properties back to Akron Dry Goods. On its tax return for the fiscal year ended January 31, 1929, Akron Dry Goods reported a loss from the sale of real estate involved in the transaction. The IRS initially disagreed, but ultimately accepted the company's position that it was a sale resulting in a loss, and the company paid the additional tax. In later years, the company did not treat the properties as assets or claim depreciation on them. During the taxable year ended January 31, 1936, the First Central Trust Company appraised the value of petitioner's assets on the basis of a forced sale and determined that its liabilities were in excess of assets. By compromise agreement with certain creditors on August 30, 1935, petitioner settled $ 353,378.91 of its outstanding debts by payment of $ 40,000 in cash plus application of collateral held by creditors and the latter's forgiveness of amounts totalling $ 289,865.06.

**Procedural History**

The Commissioner of Internal Revenue determined a deficiency in Akron Dry Goods' excess profits tax for the fiscal year ended January 31, 1945. Akron Dry Goods petitioned the Tax Court, claiming an overpayment and alleging errors in the Commissioner's failure to allow certain depreciation deductions and to include an amount as a contribution to capital in determining equity invested capital. The Tax Court ruled against Akron Dry Goods, finding that the company was estopped from taking inconsistent positions and that the debt cancellation did not increase its

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equity invested capital.

## Issue(s)

1. Whether Akron Dry Goods is estopped from claiming depreciation on certain properties in 1945, given its prior inconsistent treatment of a 1928 land trust certificate transaction as a sale, where it took a loss deduction?
2. Whether the cancellation of Akron Dry Goods' indebtedness increased its equity invested capital for excess profits tax purposes?

## Holding

1. No, because the taxpayer took a deduction for a loss on the sale of the property in a prior year, and is now trying to recharacterize that sale to take depreciation deductions, which would result in a double tax benefit.
2. No, the court declined to follow Crean Brothers, Inc. v. Commissioner as reversed by the Third Circuit, and held that the cancellation of indebtedness did not increase equity invested capital.

## Court's Reasoning

The Tax Court reasoned that Akron Dry Goods was attempting to take advantage of an alleged mistake (the characterization of the 1928 transaction) to gain a tax deduction benefit in 1945, while having already received a tax deduction benefit in 1929. The court cited the established principle of not allowing a double tax benefit. The court emphasized that the petitioner's actions and representations in 1928 and subsequent years indicated an intention to treat the transaction as a sale. The court stated that now to correct for the purpose of a claimed tax deduction benefit in the taxable year 1945 an alleged mistake, but actually an inconsistent position, which resulted in the petitioner's election to take a tax deduction benefit in the taxable year 1929 – a year as to which any adjustment is barred by the statute of limitations – would be contrary to the established principle of not allowing a double tax benefit.

## Practical Implications

This case illustrates the principle that taxpayers cannot take inconsistent positions to gain tax advantages, especially when the statute of limitations bars adjustments to prior years. Taxpayers must consistently treat transactions and assets for tax purposes. If a taxpayer has taken a position on a return and benefited from that position, they may be estopped from taking an inconsistent position in a later year, even if the original position was arguably incorrect. This case serves as a reminder to carefully consider the tax implications of transactions and to maintain consistency in tax reporting. It also highlights the importance of clear documentation of a taxpayer's intent at the time of a transaction.

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