***19 T.C. 282 (1952)***

A corporation that sells its principal assets but continues to operate a portion of its business without dissolving is entitled to carry back unused excess profits credit.

**Summary**

Coca-Cola Bottling Company of Sacramento, Ltd. (Sacramento Corporation) sold its bottling equipment and granted a sublicense to a partnership but did not dissolve, continuing to operate a portion of its business. The Tax Court addressed whether Sacramento Corporation, no longer considered a personal holding company, could carry back unused excess profits credit from 1946 to 1944. The court held that Sacramento Corporation was entitled to the carry-back because it continued in business and did not dissolve, distinguishing prior cases where the corporation had ceased to exist for tax purposes. This decision emphasizes the importance of a corporation's continued existence and intent when determining eligibility for tax benefits.

**Facts**

Sacramento Corporation was engaged in the business of bottling Coca-Cola under a sublicense. On January 1, 1944, a partnership was formed, and Sacramento Corporation granted the partnership a sublicense to bottle and vend Coca-Cola in the same territory. Sacramento Corporation sold its bottling equipment and inventories to the partnership, receiving notes in return. The corporation also leased property to the partnership. Sacramento Corporation did not dissolve and continued to operate, receiving rents, royalties, dividends, and interest, and holding the sublicense from Pacific Coast.

**Procedural History**

The Tax Court initially addressed whether certain income of Sacramento Corporation constituted royalties. After the enactment of Section 223 of the Revenue Act of 1950, the court reconsidered the case. The Commissioner conceded that Sacramento Corporation was not a personal holding company in 1946, leading to the new issue of whether the corporation could carry back unused excess profits credit to 1944.

**Issue(s)**

Whether Sacramento Corporation, which sold its principal assets to a partnership but continued to operate a portion of its business without dissolving, is entitled to carry back to 1944 unused excess profits credit from 1946 under Section 710(c)(3)(A) of the Internal Revenue Code.

**Holding**

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Yes, because Sacramento Corporation continued in a related business, took no steps to dissolve, and had no intention of dissolving; therefore, it is entitled to carry back the unused excess profits credit.

## Court’s Reasoning

The court distinguished its prior decisions in other cases, noting that those cases involved situations where the corporation had effectively ceased to exist for tax purposes. The court found the facts in this case similar to those in another case, where the corporation continued in business related to its original business, did not dissolve, and had no intention of dissolving. The court emphasized that Sacramento Corporation continued in a business related to its bottling and vending business. The court quoted a prior case stating: “Although its principal business, and the business for which it was organized, the manufacture of cotton textiles, was discontinued in 1942, its corporate charter and all the rights and privileges of incorporation were retained. Petitioner took no steps to dissolve * * * and, * * * had no intention of dissolving.” The court concluded that under Section 710(c)(3)(A) of the Code, Sacramento Corporation was entitled to carry back the unused excess profits credit from 1946 to 1944.

## Practical Implications

This decision clarifies that a corporation’s continued existence and intent are critical factors in determining eligibility for tax benefits like carry-back of unused excess profits credit. The ruling indicates that selling principal assets does not automatically disqualify a corporation from such benefits, provided it continues to operate a portion of its business and demonstrates no intent to dissolve. Tax advisors and legal professionals should carefully assess a corporation’s ongoing business activities and intentions when structuring transactions that involve the sale of assets. Later cases may distinguish this ruling based on the extent of the corporation’s continued business activities and evidence of intent to dissolve.

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