19 T.C. 587 (1952)

A sale of corporate assets is a closed transaction for tax purposes when the seller has an unqualified right to receive the consideration, regardless of when the deed is formally delivered.

Summary

North Carolina Lumber Company sold its assets in July 1944, receiving cash and notes. The company dissolved and distributed the notes as liquidating dividends. The Tax Court addressed whether capital gains from the sale were taxable in the fiscal year ending November 30, 1944. The court held that the capital gains were taxable in the fiscal year ending November 30, 1944, because the sale was a closed transaction when the company transferred its assets and had the right to receive payment, regardless of the installment payment schedule. The court also ruled that a proration formula for income and surtaxes did not apply to the declared value excess-profits tax.

Facts

North Carolina Lumber Company (NCLC) was a corporation engaged in logging and veneer manufacturing. In early 1944, J.W. Wells, authorized by shareholder resolution, negotiated to sell NCLC's assets to Shaw and Gooch for $725,000. To facilitate the down payment, NCLC transferred timber rights to Plywoods-Plastics Corporation (controlled by Shaw) as collateral for a loan. On July 17, 1944, NCLC executed a timber grant to Plywoods-Plastics, a deed to Shaw and Gooch for real estate, and a bill of sale for personal property. Shaw and Gooch formed a partnership, North Carolina Lumber and Veneer Company, to operate the business. NCLC liquidated in July 1944, distributing notes from the sale as liquidating dividends.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in NCLC's income, declared value excess-profits, and excess profits taxes for various fiscal years, including the year ending November 30, 1944. NCLC contested only the declared value excess-profits tax for the fiscal year ended November 30, 1944, before the Tax Court.

Issue(s)

1. Whether capital gain on the sale of assets is to be excluded from income (a) by reason of section 510 of the Revenue Act of 1943 or (b) by reason of the allocation formula contained in I.R.C. § 108(b)?

2. Whether transactions that occurred in the fiscal year ended November 30, 1944, were closed transactions so as to result in gain being realized in that year?

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Holding

1. No, because NCLC's taxable year began before December 31, 1943, and I.R.C. § 108(b) does not apply to the declared value excess-profits tax.

2. Yes, because NCLC had an unqualified right to receive the sales price and the purchasers took possession of the assets.

Court's Reasoning

Regarding the capital gain exclusion, the court reasoned that Section 510(b) of the Revenue Act of 1943 only applied to taxable years beginning after December 31, 1943. NCLC's fiscal year began December 1, 1943, and therefore did not qualify for the exclusion. The court rejected the argument that because the tax year ended in 1944, it should be considered a year

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