22 T.C. 703 (1954)

To qualify for relief under Section 722 of the Internal Revenue Code, a taxpayer must demonstrate that the excess profits tax computed without the benefit of this section is excessive and discriminatory due to qualifying factors.

Summary

The Austin Company sought relief from excess profits tax for 1940 and 1941 under Section 722 of the Internal Revenue Code, claiming that the tax was excessive and discriminatory. The company argued that its business was depressed during the base period and that a contract with Dow Chemical Company constituted a change in the character of its business. The Tax Court held that Austin Company did not prove its excess profits tax was excessive and discriminatory under Section 722 because it did not establish that its business cycle differed materially from the general business cycle or that the contract with Dow Chemical constituted a significant change in its business character as defined by the law. The Court found that the company's business mirrored industry trends, and the contract with Dow, while advantageous, did not fundamentally alter the company's operations in a way that warranted tax relief.

Facts

The Austin Company, an Ohio corporation, was in the construction business, primarily designing and constructing factory and industrial buildings. It had operated through subsidiaries, including the Austin Company of California and the Austin Company of Texas, which ceased operations in 1937. The petitioner also owned subsidiaries, including the Austin Realty Company and Austin Securities Company which provided financing for construction projects. The company entered into a continuing construction agreement with the Dow Chemical Company in February 1939, and also had a previous agreement with the Continental Can Company, Inc. The company filed for relief from excess profits tax under Section 722 of the Internal Revenue Code for 1940 and 1941, which was disallowed by the Commissioner. The company computed its excess profits tax based on invested capital, but it was eligible to use the excess profits credit based on income under section 713.

Procedural History

The Austin Company filed applications for relief from excess profits tax under section 722 of the Internal Revenue Code for the years 1940 and 1941. The Commissioner of Internal Revenue disallowed the claims. The Austin Company then filed a petition in the U.S. Tax Court for review of the Commissioner's determination.

Issue(s)

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1. Whether The Austin Company is entitled to relief from excess profits tax for the taxable years ending December 31, 1940, and 1941, under the provisions of Section 722(a) and (b) of the Internal Revenue Code.

Holding

1. No, because the petitioner failed to demonstrate that its excess profits tax was excessive and discriminatory due to a materially different business cycle or a qualifying change in the character of its business.

Court’s Reasoning

The Court emphasized that to obtain relief under Section 722, the Austin Company had to establish that its excess profits tax was

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