***The Dayton Rubber Co. v. Commissioner*, 12 T.C. 398 (1949)**

A taxpayer seeking relief under Section 722 of the Internal Revenue Code of 1939, which addresses excess profits taxes, cannot combine the constructive average base period net income calculation method with the growth formula under section 713(f).

Summary

The Dayton Rubber Company sought relief from excess profits taxes under Section 722 of the Internal Revenue Code, arguing for a constructive average base period net income (CABPNI) that incorporated the growth formula outlined in Section 713(f). The Tax Court held against the company, ruling that the two methods were mutually exclusive, as stated in Section 722(a) of the code. The court reasoned that the taxpayer must use constructive average base period net income "in lieu of the average base period net income otherwise determined under this subchapter." The court noted that to allow the taxpayer to use both would effectively result in a combination of reliefs, which is prohibited under the relevant sections of the code.

Facts

The Dayton Rubber Company (taxpayer) manufactured tires, tubes, and other products. During its base period (1936-1940), the company established a textile division, which initially generated losses but later became profitable. Under Section 722, the company sought to recalculate its CABPNI to reflect the new division's potential. It calculated its average base period net income under section 713(f) and also calculated a constructive average base period net income for the new textile division. The company attempted to combine the growth formula from section 713(f) with the constructive income from the new division under section 722.

Procedural History

The Commissioner of Internal Revenue disallowed the company's claims for relief under Section 722. The taxpayer brought the matter before the Tax Court, which considered the consolidated proceedings. The Tax Court sided with the Commissioner.

Issue(s)

1. Whether, in determining a constructive average base period net income under section 722(a), a taxpayer is also entitled to the benefits of the growth formula under section 713(f).

Holding

1. No, because the two sections are mutually exclusive.

Court's Reasoning

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The court began by noting that Section 722(a) specifies that when a taxpayer establishes a constructive average base period net income,

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