***Dumont-Airplane & Marine Instruments, Inc. v. Commissioner of Internal Revenue*, T.C. Memo. 1958-37**

A corporation's basis in assets acquired as a contribution to capital is limited to the transferor's basis, especially when the transferor recognized a loss on the transfer; furthermore, unused excess profits credits are not transferable and cannot be carried back by a successor corporation after a tax-free reorganization.

Summary

Dumont-Airplane & Marine Instruments, Inc. sought to increase its depreciable basis in a plant it purchased, claiming it was a contribution to capital, and to utilize the unused excess profits credit of a predecessor corporation acquired in a tax-free reorganization. The Tax Court rejected both claims. The court held that Dumont's basis in the plant was limited to its purchase price, not a revalued amount, as the transfers were not gifts or contributions to capital. Additionally, the court ruled that unused excess profits credits are personal to the taxpayer who generated them and cannot be carried back by a successor corporation, emphasizing the principle that tax benefits are generally not transferable.

Facts

American Mond Nickel Company (American Mond) sold its Clearfield Plant to Clearfield Corporation for $15,000 in 1936, reporting a capital loss. Clearfield Corporation leased the plant to Dumont in 1939 with an option to purchase. Dumont exercised the option in 1942, purchasing the plant for $43,000, allocating $39,000 to buildings. Dumont depreciated the buildings based on this $39,000 cost basis until 1951. In 1951, Dumont revalued the buildings to $353,504.75 based on a 1951 appraisal estimating 1942 replacement cost and claimed depreciation on this higher basis for 1951-1953. In 1953, Dumont acquired Dumont Electric Corporation in a tax-free reorganization and sought to carry back Dumont Electric's unused excess profits credits to offset Dumont's 1952 taxes.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Dumont's income and excess profits taxes for 1951-1953, disallowing the increased depreciation basis and the unused excess profits credit carryback. Dumont petitioned the Tax Court to contest these deficiencies.

Issue(s)

1. Whether the Commissioner properly determined Dumont's basis in the Clearfield Plant buildings for depreciation and excess profits credit purposes to be its original cost of $39,000, rather than a revalued amount based on a later appraisal.
2. Whether Dumont could utilize the unused excess profits credit of Dumont

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Electric Corporation, acquired in a tax-free reorganization, to adjust its 1952 excess profits tax liability.

Holding

1. No, the Commissioner properly determined Dumont's basis. Dumont's basis in the Clearfield Plant buildings is limited to its cost of $39,000 because the acquisition was a purchase, not a gift or contribution to capital, and Dumont failed to prove the fair market value at the time of purchase exceeded this price.
2. No, Dumont cannot utilize Dumont Electric's unused excess profits credit. Unused excess profits credits are personal to the taxpayer who incurred them and are not transferable to a successor corporation in a reorganization.

Court's Reasoning

Basis Issue: The court distinguished *Brown Shoe Co. v. Commissioner*, where community groups made contributions to capital. Here, American Mond sold the plant for consideration, reporting a loss, indicating a sale, not a gift. Even if it were a contribution to capital to Clearfield Corporation, under Section 113(a)(8)(B) of the 1939 I.R.C., the basis would be reduced by the loss recognized by American Mond. Regarding the sale to Dumont, the court noted Dumont was obligated to purchase at a fixed price from the lease agreement. Dumont did not prove the fair market value exceeded the purchase price at the time of the lease, thus no gift or contribution to capital from Clearfield Corporation. The court found *Las Vegas Land & Water Co.* more analogous, where basis was limited to the nominal consideration paid.

Carryback Issue: The court emphasized that Section 432(c)(1) of the 1939 I.R.C. allows a carryback only for "the taxpayer" with the unused credit. Citing *New Colonial Ice Co. v. Helvering*, the court reiterated the principle that tax losses are personal and not transferable. The court distinguished cases like *Stanton Brewery v. Commissioner*, which involved carryovers in mergers, noting this case was about carrybacks and a separate, unrelated corporation's credit. The court aligned with the principle in *Libson Shops, Inc. v. Koehler*, stating the carryback was improper because Dumont's 1952 profits were not generated by Dumont Electric's business. The court concluded that allowing Dumont to use Dumont Electric's credit would improperly offset Dumont's profits with the credit of a previously unrelated entity.

Practical Implications

Dumont-Airplane & Marine Instruments clarifies that for an asset transfer to be considered a contribution to capital allowing for a carryover basis, there must be clear intent of a gift or contribution, not a sale for consideration, even if at a bargain price. The case reinforces that a transferor's loss recognition on a sale can limit the transferee's basis, even in contribution scenarios. Practically, taxpayers cannot easily revalue purchased assets to increase depreciation deductions based on later

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appraisals, especially when the original transaction was clearly a purchase. Furthermore, this case, along with *Libson Shops*, underscores the limitations on transferring tax attributes like unused credits in corporate reorganizations, particularly concerning carrybacks to periods before the reorganization and involving previously separate entities. It highlights the importance of tracing income and losses to the specific taxpayer who generated them, a principle that continues to influence tax law in corporate acquisitions and carryover rules.

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