30 T.C. 1355 (1958)

When calculating the excess profits credit for a consolidated group, unrealized profits from intercompany transactions are eliminated. The basis of assets in intercompany transactions is determined as if the corporations were not affiliated.

Summary

Kentucky Farm & Cattle Co. (Kentucky) and its subsidiaries filed consolidated tax returns. The primary issue was how to treat intercompany transactions, specifically the sale of tobacco by Kentucky to its subsidiary, Alden, in determining the excess profits credit. The Tax Court held that Kentucky could include cash payments from Alden in its equity capital, but Alden's inventory increases (representing the tobacco) had to be taken as zero. Additionally, the Court affirmed that a subsidiary's negative equity capital, resulting from liabilities exceeding assets, could result in a capital reduction, affecting the consolidated tax credit. Finally, the Court held that Kentucky did not prove a debt owed to Kentucky's president by a subsidiary was worthless, which would have created a capital addition. The Court's ruling emphasizes the principle of consolidated returns reflecting a true tax picture, requiring the elimination of unrealized intercompany profits and consistent asset basis determination within the group.

Facts

Kentucky, the parent corporation, filed consolidated income tax returns with its subsidiaries for 1950, 1951, and 1952. One subsidiary, Alden, was a "new corporation" under Section 445 of the Internal Revenue Code of 1939. Kentucky sold tobacco to Alden in 1949 and 1950 for cash payments. Alden's inventory increased as a result of these purchases. Kentucky included the cash payments in its equity capital for excess profits credit calculations. The Commissioner eliminated from consolidated equity capital the amount of unrealized profits resulting from the intercompany sales. Another subsidiary, Northway, owed a debt to Kentucky's president, Salmon. Northway was liquidated on December 29, 1950.

Procedural History

The Commissioner of Internal Revenue determined deficiencies against Kentucky in its consolidated income tax for 1950 and 1951, due to the treatment of the intercompany transactions and the worthlessness of debt owed. The Tax Court heard the case based on stipulated facts. The case was related to carryback of unused excess profits credit from 1952 to 1951. The Tax Court considered the issues relating to unrealized profits, negative equity capital, and the worthlessness of debt and sided with the Commissioner on all three issues.

Issue(s)

1. Whether, in determining the excess profits credit, Kentucky is entitled to include

both the cash paid by Alden and the equivalent net inventory increases of Alden, resulting from intercompany sales of tobacco.

2. Whether the consolidated net taxable year capital addition should be reduced by the separately computed net taxable year capital reduction of a subsidiary, Alden, which had liabilities exceeding assets, resulting in negative equity capital.

3. Whether a debt owed by Northway to Salmon became worthless at the close of 1950, generating a net capital addition for the group.

Holding

1. No, because Kentucky is entitled to include cash payments from Alden in its equity capital, but Alden's net inventory increases must be taken as zero.

2. Yes, the capital addition should be reduced by the subsidiary's negative equity capital.

3. No, because Kentucky did not meet its burden of proving that Northway's debt became worthless.

Court's Reasoning

The Court focused on the regulations governing consolidated returns, particularly those designed to prevent duplicated benefits. It determined that for the purpose of calculating Alden's "total assets" under section 445, the basis of tobacco purchased from Kentucky should be the cost of the tobacco to Kentucky, not Alden's increased inventory valuation. The Court stated, "[t]he plain import of the language of the regulations is that the basis to the affiliated group during a consolidated return period for determining gain or loss shall be the original cost of the asset to the affiliated group." Including both the cash and the inventory increase would constitute a double benefit, which the regulations aim to prevent. The Court held that Alden's negative equity capital resulted in a capital reduction for the group, following the principle established in *Mid-Southern Foundation*. The court found that Kentucky did not provide enough evidence to show the Salmon debt became worthless in 1950, as it needed to identify a specific event proving the change of circumstances for the debt.

Practical Implications

This case illustrates the importance of adhering to the rules for consolidated returns, especially in dealing with intercompany transactions. Attorneys analyzing similar situations should:

1. Carefully examine the regulations regarding the elimination of unrealized profits and losses. The court emphasized this point noting, "At the outset, it should be noted that both parties agree that unrealized intercompany profits and losses resulting

from transactions between members of the affiliated group should be eliminated when computing the consolidated net income."

2. Determine the proper basis of assets transferred in intercompany transactions. The Court referenced that the basis of the tobacco should be at Kentucky's cost, not Alden's purchase price.

3. Consider the impact of a subsidiary's negative equity capital on the consolidated tax credit. The Tax Court referred to its precedent to hold on this point.

4. Be prepared to provide sufficient evidence to support claims of worthlessness for debts, providing specific evidence to support this point.

5. This case emphasizes the importance of adjusting intercompany transactions to reflect the true financial condition of the consolidated group for tax purposes, not allowing double deductions or credits based on intercompany sales or other intercompany transactions.

