Dixie Portland Flour Co. v. Commissioner, 31 T.C. 649 (1959)

To qualify as an "acquiring corporation" under the excess profits tax laws, a company must acquire substantially all of the properties of another entity in a transaction that meets the requirements for non-recognition of gain or loss under section 112 (b) (5) of the Internal Revenue Code.

Summary

Dixie Portland Flour Co. sought excess profits tax relief, claiming it was an "acquiring corporation" due to its acquisitions of assets from Majestic Flour Mill, Eisenmayer Milling Company, and Arkansas City Flour Mills. The Tax Court addressed whether the acquisitions qualified under Section 740(a) of the 1939 Code, which defines "acquiring corporation." The court determined Dixie Portland did not acquire "substantially all" of Majestic's properties, as it retained key operating assets and the exchange was not solely for stock or securities, failing to meet the requirements of Section 112(b)(5). Consequently, Dixie Portland was denied relief under Section 740, 742, and Section 722 of the 1939 Code, concerning excess profits tax credit computations.

Facts

Dixie Portland Flour Company (Dixie Portland) acquired stock in Eisenmayer Milling Company (Eisenmayer) in 1939, and later Eisenmayer’s assets were converted into cash and distributed. In 1940, Dixie Portland acquired all the stock of Arkansas City Flour Mills (Arkansas), and Arkansas was dissolved in 1942, transferring its assets to Dixie Portland. In 1942, Dixie Portland entered into an agreement with Majestic Flour Mill (Majestic), a partnership. Dixie Portland purchased Majestic's current assets, and Majestic leased its fixed assets to Dixie Portland. Majestic later sold some of its retained assets to third parties, with the remaining assets sold off over time. The key issue was whether the Majestic transactions qualified Dixie Portland as an "acquiring corporation" under the 1939 Code.

Procedural History

Dixie Portland filed for excess profits tax relief, which was denied by the Commissioner. Dixie Portland then petitioned the Tax Court for a redetermination of its tax liability. The Tax Court examined the acquisitions to determine if Dixie Portland qualified as an "acquiring corporation." The court ultimately ruled against Dixie Portland, denying the claimed tax relief.

Issue(s)

Whether Dixie Portland qualified as an “acquiring corporation” within the meaning of section 740 (a) of the 1939 Code with respect to its acquisition of

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certain properties of Majestic.
Whether the transfer of Majestic’s assets constituted an exchange to which the provisions of section 112 (b) (5) of the Code applied.

Holding

No, because Dixie Portland did not acquire “substantially all” of Majestic’s properties.
No, because the properties transferred to Dixie Portland were not transferred “solely in exchange for stock or securities” in petitioner.

Court's Reasoning

The court examined Section 740(a)(1)(D) of the 1939 Code, which defines an "acquiring corporation" as one that has acquired “substantially all” the properties of a partnership in an exchange to which Section 112 (b) (5) applies. The court determined that Dixie Portland did not acquire “substantially all” of Majestic’s properties. The court reasoned that Majestic retained its operating assets, which were crucial to its base period experience. The court also noted that Section 112 (b) (5) requires the transfer to be “solely in exchange for stock or securities.” The court found that the debenture notes Dixie Portland issued to Majestic did not constitute “stock or securities” because Majestic did not retain any proprietary interest in Dixie Portland. The court cited LeTulle v. Scofield, 308 U.S. 415, which established that when consideration is wholly in bonds, the transferor becomes a creditor, not a holder of proprietary interest. The court also noted that these were loans and not exchanges of assets for securities.

The court stated: "[W]e think that petitioner must also fail on this point because the properties transferred to petitioner were not transferred to it 'solely in exchange for stock or securities' in petitioner, as required by section 112 (b) (5)."

Practical Implications

This case is crucial for interpreting the definition of “acquiring corporation” in the context of tax relief. Legal practitioners should consider the following points when advising clients on corporate acquisitions: the

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