***Glimcher v. Commissioner*, 31 T.C. 1093 (1959)**

A U.S. shareholder of a foreign personal holding company is taxed on their proportionate share of the company's undistributed income if the company meets the stock ownership and gross income tests defined in the Internal Revenue Code.

Summary

The case concerns the tax liability of a U.S. citizen, Glimcher, who owned 95% of the shares of a Canadian corporation, Hekor. The IRS determined that Hekor was a foreign personal holding company (FPHC) and taxed Glimcher on the undistributed Supplement P net income of Hekor. The Tax Court agreed, finding that Hekor met both the gross income and stock ownership tests required for FPHC status, despite Glimcher's arguments that the government did not have beneficial ownership and that he should only be taxed on income earned after he became a shareholder. The court held Glimcher liable for the taxes, as the law was clear.

Facts

- Glimcher, a U.S. citizen, became the owner of 9,500 shares of Hekor, a Canadian corporation, on September 8, 1951.
- The only other shareholder was Pierre du Pasquier, a French citizen, who owned 500 shares (5%).
- The IRS determined that Hekor met the criteria of a foreign personal holding company (FPHC).
- The IRS taxed Glimcher on his proportionate share (95%) of Hekor's undistributed income for 1951, 1953, and 1954.

Procedural History

- The Commissioner of Internal Revenue determined a tax deficiency against Glimcher based on his ownership of Hekor.
- Glimcher disputed the tax assessment in the U.S. Tax Court.
- The Tax Court upheld the Commissioner's determination.

Issue(s)

1. Whether Hekor was a foreign personal holding company under Section 331(a)(2) of the Internal Revenue Code, considering the stock ownership requirement.
2. Whether the statutes should be construed to tax the petitioner in the manner the Commissioner determined.
3. Whether the application of the FPHC provisions to Glimcher was unconstitutional.
4. For the year 1951, whether Glimcher could only be required to include in gross income, an amount greater than 95% of Hekor's income that arose after September 8, 1951.

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Holding

1. Yes, because Glimcher's ownership of 95% of Hekor's stock met the stock ownership test under Section 331(a)(2) of the Internal Revenue Code.
2. Yes, because, even if it produces harsh results, the law appears clear.
3. No, because the application of the statutes does not violate the U.S. Constitution.
4. No, because the statute applies for the entire year.

Court's Reasoning

The court first addressed the central issue of whether Hekor qualified as an FPHC. The court focused on the stock ownership requirement and found that Glimcher's ownership of 95% of the outstanding shares met the criteria of Section 331(a)(2). The court stated, "when the parties stipulate that from September 8, 1951, petitioner was the holder and owner of 95 per cent of Hekor's outstanding stock, we must assume that by the use of the word 'own' the parties meant to include beneficial ownership as well as ownership of the bare legal title." Even though the IRS had liens against the stock, Glimcher still owned it. Thus, the court found that Hekor was an FPHC.

The court then addressed Glimcher's argument that the statutes should not be applied literally. The court referenced the legal principle, "that fact would not be sufficient justification for us to say that Congress did not intend that section 837 should apply to a taxpayer occupying the situation of petitioner."

Glimcher's third argument was that the law was unconstitutional. The court quickly dismissed his claim and, citing *Helvering v. Northwest Steel Rolling Mills*, found the claim to have no merit.

Finally, the court ruled that the statute provided that the shareholder's tax liability applied for the full taxable year, irrespective of when in the year the shareholder acquired their shares. The court stated that the result may be harsh, but the remedy is within the province of Congress, not of the court.

Practical Implications

This case reinforces the importance of understanding the specific rules governing FPHCs under the Internal Revenue Code. Attorneys advising clients with interests in foreign corporations must carefully analyze both the income and stock ownership tests to determine whether FPHC status applies. The case highlights that the court will not be swayed by harsh results if the statute is clear. This means that the statute's plain meaning will be followed. Counsel must consider:

- How a client's stock ownership impacts the FPHC determination.
- Whether the client's foreign entity meets the FPHC gross income test.
- When a shareholder acquires shares in the taxable year.

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- The consequences of FPHC status, which includes taxation of undistributed income.

The case also suggests that even if the result seems unfair, the court’s role is limited to interpreting the law as it is written. If taxpayers believe the statute is unjust, they must seek a remedy through legislation.

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