***[Tax Ct. Memo. 1952]***

For a non-corporate shareholder to qualify for tax deferral under Section 112(b)(7) of the 1939 Internal Revenue Code during a corporate liquidation, elections must be filed by shareholders holding at least 80% of the voting stock, regardless of whether an individual shareholder has personally filed a timely election.

**Summary**

This case addresses whether a shareholder can defer recognition of gain from a corporate liquidation under Section 112(b)(7) of the 1939 Internal Revenue Code when not all shareholders timely elect for such treatment. The petitioner, owning 50% of a corporation, filed an election, but the other 50% shareholder did not. The Tax Court held that even if the petitioner's election was timely, she could not benefit from Section 112(b)(7) because the statute requires elections from holders of at least 80% of the voting stock. This case underscores the strict adherence to the 80% election requirement for tax-free corporate liquidations under the 1939 Code.

**Facts**

The petitioner and Patricia Brophy each owned 50% of Peninsular Development and Construction Company, Inc. In November 1952, Peninsular adopted a plan of complete liquidation to occur within December 1952. The petitioner received property valued at $68,373.90 in the liquidation; her stock basis was $10,483.61. The petitioner filed Form 964, electing Section 112(b)(7) treatment, which was received by the Bureau of Internal Revenue on January 2, 1953. Patricia Brophy did not timely file Form 964. The Commissioner determined the petitioner was not entitled to Section 112(b)(7) benefits.

**Procedural History**

The Commissioner determined a deficiency in the petitioner's 1952 income tax. The petitioner contested this determination in Tax Court, arguing she had validly elected Section 112(b)(7) treatment.

**Issue(s)**

1. Whether the petitioner's election under Section 112(b)(7) was timely filed?

2. Whether the petitioner, as a 50% shareholder who filed an election, is entitled to the benefits of Section 112(b)(7) when the other 50% shareholder did not file a timely election?

**Holding**

1. The court did not decide whether the petitioner's election was timely.

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2. No, because Section 112(b)(7) requires timely elections from shareholders holding at least 80% of the voting stock for any non-corporate shareholder to qualify for its benefits.

**Court's Reasoning**

The court focused on the statutory language of Section 112(b)(7)(C)(i), which defines a "qualified electing shareholder." The statute explicitly states that a non-corporate shareholder qualifies only "if written elections have been so filed by shareholders (other than corporations) who at the time of the adoption of the plan of liquidation are owners of stock possessing at least 80 per centum of the total combined voting power…" The court stated, "we think the statute plainly indicates that its benefits are not available to any shareholder unless timely elections are filed by the holders of at least 80 per cent of the stock of the liquidating corporation." Because it was stipulated that the other 50% shareholder did not file a timely election, the court concluded that even if the petitioner's election was timely, the 80% requirement was not met, and therefore, the petitioner could not benefit from Section 112(b)(7).

**Practical Implications**

This case highlights the critical importance of the 80% shareholder election requirement for non-recognition of gain in corporate liquidations under Section 112(b)(7) of the 1939 IRC and similar successor provisions. It establishes that strict compliance with the 80% threshold is necessary; the timely election of an individual shareholder is insufficient if the collective 80% threshold is not met. Legal practitioners must ensure that in corporate liquidations seeking tax deferral under these provisions, elections are secured from shareholders representing at least 80% of the voting stock. This case serves as a reminder that statutory requirements for tax benefits are strictly construed and that failing to meet all conditions, even seemingly minor ones, can result in the denial of intended tax advantages.

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