Wales v. Commissioner, 44 T. C. 380 (1965)

A plan of liquidation under IRC Section 333 is adopted when shareholders commit to a course of liquidation, even if not formally detailed in a written document.

Summary

In Wales v. Commissioner, the Tax Court determined that the Waleses' filing of a statement of intent to dissolve their corporation, Harmack Grain Co. , on November 18, 1960, constituted the adoption of a plan of liquidation under IRC Section 333. This filing triggered the 30-day window for electing favorable tax treatment, which the Waleses missed. The court clarified that a formal written plan is not necessary for a plan of liquidation to be considered adopted; rather, a commitment to liquidate as per state law suffices. This decision has practical implications for how taxpayers must time their elections for tax treatment in corporate liquidations.

Facts

Harold and Dorothy Wales, the sole shareholders of Harmack Grain Co. , filed a statement of intent to dissolve the corporation with the State of Colorado on November 18, 1960. They subsequently filed articles of dissolution on February 16, 1961, and received a certificate of dissolution on March 3, 1961. On March 17, 1961, they filed Form 966 indicating a plan of dissolution or liquidation adopted on February 16, 1961, and attached Forms 964 electing to have their shares taxed under IRC Section 333. On their 1961 tax return, they reported liquidation distributions as long-term capital gains, but the Commissioner treated these as dividends, resulting in a higher tax liability.

Procedural History

The Waleses petitioned the Tax Court to challenge the Commissioner's determination of their 1961 tax deficiency. The court needed to decide whether the plan of liquidation was adopted on November 18, 1960, or February 16, 1961, as this affected the timeliness of their election under IRC Section 333.

Issue(s)

1. Whether the filing of a statement of intent to dissolve on November 18, 1960, constituted the adoption of a plan of liquidation under IRC Section 333.

Holding

1. Yes, because under Colorado law, the filing of the statement of intent to dissolve committed the Waleses to a course of liquidation, thereby adopting a plan of liquidation on November 18, 1960. Their subsequent election under IRC Section 333 was untimely.

Court’s Reasoning

The court reasoned that the adoption of a plan of liquidation under IRC Section 333 does not require a formal written document but can be evidenced by actions that commit to a course of liquidation. The court cited Colorado statutes that required the corporation to cease normal business operations and proceed with liquidation upon filing the statement of intent to dissolve. This commitment to follow the statutory liquidation process was deemed sufficient to constitute the adoption of a plan of liquidation on November 18, 1960. The court referenced the Fourth Circuit’s decision in Shull v. Commissioner, which held that filing a consent to dissolution under Virginia law was equivalent to adopting a plan of liquidation. The court concluded that the Waleses’ election under IRC Section 333, filed more than 30 days after November 18, 1960, was untimely, and thus invalid. The court emphasized that the statutory language in Section 333(a)(1) only requires liquidation to be in pursuance of a plan, without specifying the formality of the plan’s adoption.

Practical Implications

This decision clarifies that taxpayers must be aware of the timing of their actions in corporate dissolutions, as the adoption of a plan of liquidation can occur when committing to a state’s statutory liquidation process. Practitioners should advise clients to file elections under IRC Section 333 promptly after taking steps that commit to liquidation. This ruling has influenced subsequent cases where the timing of liquidation plans is critical. It also underscores the importance of understanding state corporate dissolution laws in conjunction with federal tax regulations. Businesses planning dissolutions should ensure they align their actions with both state and federal requirements to avoid adverse tax consequences.

