***Teichgraeber v. Commissioner, 53 T. C. 365 (1969)***

A corporation exists and can conduct business as soon as it is legally formed, regardless of stock issuance, and a timely subchapter S election must be made within the first month of the corporation's taxable year.

**Summary**

In Teichgraeber v. Commissioner, the Tax Court held that a corporation existed and conducted business from the date its articles were filed, not when stock was issued, thus invalidating the taxpayer's claim for partnership loss deductions. Additionally, the court ruled that the corporation's subchapter S election was untimely because it was not filed within the first month of the corporation's taxable year, which began when it acquired assets and started business. This case clarifies the timing of corporate existence and the strict deadlines for subchapter S elections, impacting how taxpayers structure their business and tax planning.

**Facts**

The petitioner formed TBC, a California corporation, by filing its articles of incorporation on August 16, 1963. TBC acquired citrus acreage on October 7, 1963, and operated the business thereafter. The petitioner claimed losses from this business as partnership losses before October 28, 1964, and as TBC's losses thereafter, asserting TBC's subchapter S election was valid. TBC filed its election on November 16, 1964, after the deadline set by section 1372(c)(1).

**Procedural History**

The case was brought before the U. S. Tax Court, where the petitioner challenged the Commissioner's disallowance of his claimed deductions for losses from the citrus acreage business, both as partnership losses and as losses from TBC under a subchapter S election.

**Issue(s)**

1. Whether TBC was considered to be in existence and conducting business as of August 16, 1963, or only after stock was issued in October 1964.
2. Whether TBC's subchapter S election filed on November 16, 1964, was timely under section 1372(c)(1).

**Holding**

1. No, because TBC was a corporation from August 16, 1963, under California law, and it acquired assets and conducted business from October 7, 1963.
2. No, because the election was not filed within the first month of TBC's taxable year, which began when it acquired assets and started business.

© 2025 SCOTUSreports.com. All rights reserved. 

## Court’s Reasoning

The court relied on California corporate law, which does not require stock issuance for corporate existence, and cited cases like Brodsky v. Seaboard Realty Co. and J. W. Williams Co. v. Leong Sue Ah Quin to support this view. For tax purposes, the court followed Moline Properties v. Commissioner, emphasizing that TBC was formed for a business purpose and should not be disregarded. The court found that TBC acquired assets and operated the citrus business from October 7, 1963, evidenced by its tax filings and operations. Regarding the subchapter S election, the court applied section 1372(c)(1) and the regulations under section 1. 1372-2(b), which define the start of a corporation’s taxable year. Since TBC’s first taxable year began no later than October 7, 1963, the election filed on November 16, 1964, was untimely. The court also clarified that the petitioner and Sidney were shareholders before October 1964, capable of consenting to the election, under California law.

## Practical Implications

This decision underscores the importance of recognizing a corporation’s legal existence and business operations from the date of its formation, not contingent on stock issuance. It affects how taxpayers structure business entities and plan for tax purposes, particularly in deciding when to make subchapter S elections. The strict timeline for subchapter S elections means that taxpayers must be diligent in filing within the first month of the corporation’s taxable year, which begins upon asset acquisition or business operations. This case has been cited in subsequent rulings to emphasize these principles, influencing tax planning and corporate governance practices. Attorneys advising on business formations and tax strategies should ensure clients understand these implications to avoid similar pitfalls.

© 2025 SCOTUSreports.com. All rights reserved. 