Kansas Sand and Concrete, Inc. v. Commissioner, 57 T. C. 531 (1972)

Section 334(b)(2) of the Internal Revenue Code applies to determine the basis of assets received in a corporate liquidation when specific statutory conditions are met, regardless of the parties' intent.

Summary

Kansas Sand and Concrete, Inc. purchased all shares of Kansas Sand Co. , Inc. and subsequently merged it into itself. The key issue was whether the basis of the acquired assets should be determined by the purchase price (section 334(b)(2)) or the carryover basis (section 362(b)). The court ruled for the Commissioner, applying section 334(b)(2) because the merger satisfied the statutory conditions, despite the taxpayer's argument that it was a reorganization. This decision emphasizes that objective statutory criteria, rather than subjective intent, govern the basis determination in such transactions.

Facts

On September 28, 1964, Kansas Sand and Concrete, Inc. (Concrete) purchased all 1,050 outstanding shares of Kansas Sand Co. , Inc. (Sand). On November 30, 1964, both companies entered into a merger agreement, which was executed on December 31, 1964, resulting in Sand merging into Concrete. The merger agreement aimed to ease record keeping and centralize management. Post-merger, Concrete continued all of Sand's business activities, retained its employees, and its customers. The IRS determined tax deficiencies for Concrete for the years 1965 and 1966 and sought to apply section 334(b)(2) to compute the basis of assets acquired from Sand, while Concrete argued for the application of section 362(b).

Procedural History

The IRS determined deficiencies in Concrete's income taxes for 1965 and 1966, and also assessed transferee liability for Sand's 1964 tax deficiency. Concrete contested the basis computation method, leading to a trial before the Tax Court. The Tax Court reviewed the case and issued a decision favoring the IRS's application of section 334(b)(2).

Issue(s)

1. Whether the basis of assets received by Concrete in the December 31, 1964, merger should be computed under section 334(b)(2) or section 362(b) of the Internal Revenue Code.

Holding

1. Yes, because the merger satisfied the statutory requirements of section 334(b)(2), which mandates the use of the purchase price basis when a corporation acquires at

least 80% of another corporation's stock within 12 months and liquidates it within 2 years.

Court's Reasoning

The court applied section 334(b)(2) over section 362(b) because the statutory conditions were met: Concrete purchased 100% of Sand's stock within 12 months and liquidated Sand within 2 years. The court rejected Concrete's argument that the transaction should be considered a reorganization under section 368(a)(1)(A), emphasizing that section 334(b)(2) applies based on objective criteria rather than the parties' intent. The court cited the legislative history of section 334(b)(2), which was enacted to address factual patterns similar to those in Kimbell-Diamond Milling Co. The court also noted that while the transaction might be considered a merger under Kansas law, it still qualified as a complete liquidation under section 332 of the IRC. The court's decision aimed to provide certainty in tax planning by adhering to the clear statutory language of section 334(b)(2).

Practical Implications

This decision clarifies that the basis of assets in corporate liquidations is determined by the objective criteria of section 334(b)(2), not by the parties' subjective intent or local corporate law classifications. Practitioners must carefully consider the timing and structure of stock purchases and subsequent liquidations to avoid unexpected tax consequences. The ruling impacts tax planning for mergers and acquisitions, emphasizing the need to align transactions with statutory requirements. It may influence how companies structure their corporate reorganizations to optimize tax outcomes. Subsequent cases have generally followed this precedent, reinforcing the application of section 334(b)(2) in similar factual scenarios.

