Davis Bros. Restaurant, Inc. v. Commissioner, 60 T. C. 525 (1973)

Filing a consolidated return terminates a controlled group's election for multiple surtax exemptions under section 1562 of the Internal Revenue Code.

Summary

Davis Bros. Restaurant, Inc. , and other corporations within a controlled group had previously elected to use multiple surtax exemptions. For the fiscal year 1967, two of these corporations, Georgia Restaurant Co. and its subsidiary Davis Bros. West End, Inc. , filed a consolidated return. This action, according to the court, terminated the group's multiple surtax exemption election under section 1562(c)(3) of the IRC. The court emphasized that the filing of a consolidated return, regardless of intent, is decisive in terminating such an election. The decision highlights the mutual exclusivity of the consolidated return and multiple surtax exemption elections, impacting how controlled groups must navigate their tax filings.

Facts

Members of a controlled group of corporations, including Davis Bros. Restaurant, Inc. , had elected to use multiple surtax exemptions for several years. In the fiscal year ending September 30, 1967, Georgia Restaurant Co. and its subsidiary, Davis Bros. West End, Inc. , initially filed a consolidated return, combining their income, deductions, and credits. This return was marked as a consolidated return and included the necessary forms. After an IRS audit, these two corporations filed amended separate returns, attempting to continue their multiple surtax exemption election. However, the original filing of the consolidated return was seen as a termination of the election.

Procedural History

The IRS determined deficiencies in the tax returns of the petitioners for the fiscal year 1967. After the initial filing of a consolidated return by Georgia Restaurant Co. and Davis Bros. West End, Inc. , and subsequent amended separate returns, the case was brought before the U. S. Tax Court. The court consolidated the proceedings of multiple petitioners and ultimately decided in favor of the Commissioner, affirming the termination of the multiple surtax exemption election.

Issue(s)

1. Whether the return filed by Georgia Restaurant Co. and Davis Bros. West End, Inc. , for the fiscal year 1967 was a consolidated return under section 1501 of the IRC, thereby terminating the controlled group's multiple surtax exemption election under section 1562(c)(3).

Holding

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1. Yes, because the return filed by Georgia Restaurant Co. and Davis Bros. West End, Inc. , was a consolidated return under section 1501 of the IRC, as it combined their income, deductions, and credits and included the necessary forms indicating a consolidated return, thereby terminating the controlled group's multiple surtax exemption election under section 1562(c)(3).

Court's Reasoning

The court applied section 1562(c)(3) of the IRC, which states that a multiple surtax exemption election terminates if a member of the controlled group files a consolidated return. The court determined that the return filed by Georgia Restaurant Co. and Davis Bros. West End, Inc. , was a consolidated return because it combined their income, deductions, and credits and included a Form 1122, indicating their intent to file as such. The court emphasized that the intent to file a consolidated return was clear from the documentation and actions taken, despite the attempt to continue the multiple surtax exemption election through amended returns. The court rejected the argument that the election's termination was inadvertent, citing that the law does not allow for such considerations. The decision was influenced by the policy of maintaining consistent application of tax laws to all taxpayers.

Practical Implications

This decision underscores the importance of understanding the implications of filing a consolidated return within a controlled group. It serves as a reminder that the consolidated return and multiple surtax exemption elections are mutually exclusive, and the filing of a consolidated return automatically terminates the latter. Legal practitioners must advise clients carefully on the consequences of their tax filing choices. Businesses within controlled groups need to plan their tax strategies with this ruling in mind, as it may affect their tax liabilities. Subsequent cases have referenced Davis Bros. Restaurant, Inc. v. Commissioner when addressing the termination of multiple surtax exemption elections, reinforcing the precedent set by this decision.

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