Great Falls Bonding Agency, Inc. v. Commissioner, 63 T. C. 304 (1974)

A dissolved corporation lacks capacity to file a petition in the U. S. Tax Court after the expiration of the statutory survival period allowed by the state of incorporation.

Summary

Great Falls Bonding Agency, Inc. , dissolved under Illinois law in 1969, received a notice of deficiency from the IRS in 1973. The agency filed a petition with the U. S. Tax Court in 1974, over four years after dissolution. The Tax Court dismissed the case for lack of jurisdiction, ruling that the corporation lacked capacity to sue under Illinois law, which only extends corporate existence for two years post-dissolution. The decision emphasizes that the capacity of a dissolved corporation to litigate is determined by the state's law of incorporation, and highlights the importance of timely action by dissolved entities facing tax disputes.

Facts

Great Falls Bonding Agency, Inc. , was dissolved under Illinois law on December 22, 1969. On December 28, 1973, the IRS mailed a notice of deficiency to the agency, determining deficiencies for the tax years 1967 and 1969. On March 27, 1974, a petition was filed in the agency's name with the U. S. Tax Court. The IRS moved to dismiss the case, arguing that the agency lacked capacity to sue due to its dissolution.

Procedural History

The IRS issued a notice of deficiency to Great Falls Bonding Agency, Inc. , on December 28, 1973. The agency filed a petition with the U. S. Tax Court on March 27, 1974. On May 16, 1974, the IRS moved to dismiss the case for lack of jurisdiction. The Tax Court granted the IRS's motion and dismissed the case on December 9, 1974.

Issue(s)

1. Whether a corporation dissolved under Illinois law, which allows for a two-year survival period post-dissolution, retains capacity to file a petition in the U. S. Tax Court more than four years after its dissolution?

Holding

1. No, because under Illinois law, a dissolved corporation's capacity to sue expires two years after dissolution, and the petition was filed well beyond this period.

Court's Reasoning

The Tax Court applied Rule 60(c) of the Tax Court Rules of Practice and Procedure, which states that the capacity of a corporation to litigate in the Tax Court is determined by the law of the state of its incorporation. Illinois law, specifically Chapter 32, section 157. 94 of the Illinois Revised Statutes, allows a dissolved corporation to file suit if action is commenced within two years of dissolution. The court found that Great Falls Bonding Agency, Inc. , ceased to exist for legal purposes two years after its dissolution date, on December 22, 1971. The petition filed in 1974 was thus untimely under Illinois law. The court also noted that this principle has been consistently applied in federal courts and the Tax Court, referencing cases like *Gordon v. Loew's, Inc.* and *Charles A. Zahn Co. v. United States*. The court acknowledged the apparent anomaly of the IRS issuing a notice of deficiency to a non-existent entity but emphasized that the capacity to petition the court is a separate issue governed by state law.

Practical Implications

This decision underscores the importance of dissolved corporations acting within the statutory survival period allowed by their state of incorporation when challenging tax deficiencies. Legal practitioners must advise clients to file any necessary petitions or claims within this period to maintain jurisdiction in the Tax Court. The ruling also highlights the distinction between the IRS's ability to issue notices of deficiency to dissolved entities and those entities' capacity to litigate. Subsequent cases have followed this precedent, emphasizing that the capacity to sue is determined by state law. This case also illustrates that shareholders or transferees of a dissolved corporation may still litigate tax liabilities in their own right, as seen in the related cases filed by former shareholders of Great Falls Bonding Agency, Inc.