Dunavant v. Commissioner, 63 T. C. 316 (1974)

To qualify as an electing shareholder under Section 333 for favorable tax treatment in corporate liquidation, a shareholder must file a timely written election within 30 days of the adoption of the liquidation plan.

Summary

In Dunavant v. Commissioner, the Tax Court ruled that shareholders of a liquidating corporation must file Form 964 within 30 days of adopting the liquidation plan to be considered qualified electing shareholders under Section 333 of the Internal Revenue Code. The petitioners, who were the sole officers, directors, and shareholders of their corporation, failed to file this form despite filing Form 966 and other corporate documentation. The court emphasized the statutory requirement for a written election, rejecting the petitioners' argument of substantial compliance, and held that they were not entitled to Section 333's tax benefits due to the lack of a timely filing.

Facts

Lee R. Dunavant, Herman H. Gorlick, and Morris Gorelick were the sole officers, directors, and shareholders of D & G, Inc. On November 28, 1969, the corporation adopted a plan of liquidation. The corporation filed Form 966 on December 8, 1969, along with minutes of the shareholders' meeting and the Statement of Intent to Dissolve, which referenced Section 333 in the directors' minutes but not in the shareholders' minutes. The corporation fully liquidated on December 21, 1969. However, the shareholders did not file Form 964, which is required for electing shareholders under Section 333.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in the petitioners' 1969 federal income taxes, leading to the petitioners filing a case with the United States Tax Court. The Tax Court consolidated the cases of the three sets of petitioners and heard them together. The court's decision was based on the stipulated facts and the legal question of whether the shareholders qualified as electing shareholders under Section 333.

Issue(s)

1. Whether the petitioners are qualified electing shareholders entitled to the benefits of Section 333 with respect to the gain realized on the liquidation of their controlled corporation?

Holding

1. No, because the petitioners did not file the required written election (Form 964)

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within 30 days after the adoption of the plan of liquidation as mandated by Section 333(d).

Court’s Reasoning

The court’s reasoning focused on the strict requirement of filing a written election within 30 days as per Section 333(d). The court distinguished between procedural and substantive requirements, classifying the filing of Form 964 as substantive due to its impact on the tax treatment of shareholders. The petitioners argued that the information provided in Form 966 and other documents was sufficient for substantial compliance, but the court rejected this, stating that the essence of Section 333 is the requirement for specific, contemporaneous, and incontrovertible evidence of a binding election. The court noted that no written election by the shareholders was present on the record, and the absence of such an election was significant, leading to the conclusion that the petitioners were not qualified electing shareholders.

Practical Implications

This decision underscores the importance of strict adherence to statutory filing requirements in tax law, particularly for elections that affect tax treatment. For attorneys and tax professionals, it serves as a reminder to ensure that clients file all necessary forms within the specified time frames to avail themselves of favorable tax treatments. The ruling impacts how similar cases should be analyzed, emphasizing the need for explicit compliance with Section 333’s requirements. It also influences business practices by highlighting the potential tax consequences of failing to make timely elections during corporate liquidations. Subsequent cases have consistently upheld the necessity of timely filing for Section 333 elections, reinforcing the practical implications of this decision.

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