Dunavant v. Commissioner, T.C. Memo. 1975-72

Strict compliance with the procedural requirements of tax elections, specifically the timely filing of Form 964 for Section 333 liquidations, is mandatory and cannot be substituted by substantial compliance, even if the IRS receives similar information through other means.

Summary

Shareholders of D&G, Inc. sought to utilize the tax benefits of a Section 333 corporate liquidation but failed to file Form 964, the Election of Shareholder Under Section 333 Liquidation. They argued that filing Form 966 (Corporate Dissolution or Liquidation) with attached documentation containing similar information constituted substantial compliance. The Tax Court rejected this argument, holding that strict adherence to the statutory requirement of filing Form 964 within 30 days of adopting the liquidation plan is essential for qualifying as electing shareholders under Section 333. The court emphasized that the timely filing of Form 964 is a substantive requirement, not merely procedural, and is crucial for the administration of Section 333.

Facts

Lee R. Dunavant, Herman H. Gorlick, and Morris Gorelick were the sole shareholders, officers, and directors of D&G, Inc.

On November 28, 1969, D&G, Inc.'s board of directors and shareholders formally resolved to dissolve and liquidate the corporation under Section 333 of the Internal Revenue Code within one calendar month.

D&G, Inc. filed Form 966 with the IRS, reporting the corporate liquidation and attaching minutes of the shareholder meeting and the Statement of Intent to Dissolve.

The shareholders, however, did not file Form 964, Election of Shareholder Under Section 333 Liquidation, within 30 days of adopting the plan of liquidation.

On December 21, 1969, D&G, Inc. completed the liquidation, distributing assets to the shareholders in exchange for their stock.

The shareholders argued that because Form 966 and its attachments provided the IRS with essentially the same information as Form 964, they were in substantial compliance with Section 333 requirements.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in the petitioners' federal income taxes for 1969, disallowing Section 333 treatment.

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The shareholders petitioned the Tax Court to contest the Commissioner's determination.

The Tax Court heard the case based on a stipulated set of facts.

Issue(s)

1. Whether the petitioners, by filing Form 966 and providing related information, substantially complied with the requirements of Section 333, despite not filing Form 964.

2. Whether strict adherence to the regulatory requirement of filing Form 964 within 30 days is mandatory for shareholders to qualify for the benefits of Section 333 liquidation.

Holding

1. No, the petitioners did not substantially comply with Section 333 because the statute explicitly requires a written election (Form 964) from the shareholders, and this requirement was not met.

2. Yes, strict adherence to the requirement of filing Form 964 within 30 days is mandatory because it is a statutory prerequisite for qualifying as an electing shareholder under Section 333.

Court's Reasoning

The Tax Court emphasized that while it sometimes allows for relaxation of procedural requirements in tax elections, it has never done so for Section 333 or its predecessor without a timely Form 964 filing. The court distinguished cases where substantial compliance was accepted, noting that the requirement to file Form 964 goes to the "substance or essence of the statute," not merely a procedural detail.

The court stated, "Filing of a written election under section 333(c) has a substantive effect not only on the classification of the particular individual shareholder as a 'qualified electing shareholder' but also on the status of every other electing individual because of the 80-percent rule of section 333(c)(1)."

The court reasoned that the purpose of requiring a written election within 30 days is to provide "specific, contemporaneous, and incontrovertible evidence of a binding election to accept the tax consequences imposed by the section."

The court found that Form 966, filed by the corporation, and the attached documents did not substitute for the shareholders' required written election on Form 964. The court noted the absence of any written expression of the shareholders' intent to elect Section 333 treatment as stockholders.

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The court concluded that it was not at liberty to infer an election when the "unequivocal proof required by Congress does not exist."

Practical Implications

Dunavant v. Commissioner underscores the critical importance of strictly complying with the procedural requirements for tax elections, especially in the context of corporate liquidations under Section 333. Attorneys and CPAs advising clients on Section 333 liquidations must ensure that shareholders file Form 964 correctly and within the strict 30-day deadline. Substantial compliance arguments based on providing similar information through other forms are unlikely to succeed in Section 333 cases. This case reinforces the principle that when a statute explicitly mandates a specific form and filing deadline for a tax election, those requirements are substantive and must be meticulously followed to secure the intended tax benefits. Later cases have consistently cited *Dunavant* for the proposition that strict compliance is required for Section 333 elections, emphasizing its role in establishing a clear and enforceable standard for these types of tax elections.

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