Dillman Bros. Asphalt Co. v. Commissioner, 64 T. C. 793 (1975)

A dissolved corporation lacks the capacity to file a petition in Tax Court more than two years after its dissolution, as determined by the law of its state of incorporation.

Summary

Dillman Bros. Asphalt Co. was dissolved on February 17, 1970, and filed a petition in Tax Court on June 8, 1973, challenging a deficiency notice issued by the IRS on March 14, 1973. The court held that under Wisconsin law, a dissolved corporation has only two years to commence legal proceedings, and thus lacked jurisdiction over the case. The decision emphasizes that the capacity of a corporation to engage in litigation is governed by the law under which it was organized, impacting how dissolved corporations can address tax disputes.

Facts

Dillman Bros. Asphalt Co. , Inc. , a Wisconsin corporation, filed its corporate income tax returns for 1966 and 1969. It was dissolved on February 17, 1970, after distributing its assets to its shareholders, Bruce and Blair Dillman. On March 14, 1973, the IRS issued a notice of deficiency for the tax years 1966 and 1969. Dillman Bros. filed a petition in the U. S. Tax Court on June 8, 1973, arguing that the IRS lacked jurisdiction due to its dissolution. The IRS moved to dismiss the case, asserting that Dillman Bros. lacked the capacity to file the petition more than two years after its dissolution.

Procedural History

The IRS issued a notice of deficiency to Dillman Bros. on March 14, 1973. Dillman Bros. filed a petition in the U. S. Tax Court on June 8, 1973, and subsequently filed a motion for summary judgment on March 13, 1975. The IRS filed a motion to dismiss for lack of jurisdiction on May 19, 1975. The court considered both motions and granted the IRS’s motion to dismiss on August 5, 1975.

Issue(s)

1. Whether a dissolved corporation has the capacity to file a petition in Tax Court more than two years after its dissolution under Wisconsin law.

Holding

1. No, because under Wisconsin Statutes section 180. 787, a dissolved corporation has only two years from the date of dissolution to commence legal proceedings, and thus Dillman Bros. lacked the capacity to file the petition on June 8, 1973.

Court’s Reasoning

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The court applied Rule 60(c) of the Tax Court Rules of Practice and Procedure, which states that the capacity of a corporation to engage in litigation is determined by the law under which it was organized. Wisconsin law, specifically section 180. 787, provides that a dissolved corporation can commence legal proceedings within two years of dissolution. The court cited previous cases, including Great Falls Bonding Agency, Inc. , to support its decision. Dillman Bros. argued that the court's ruling would deprive it of due process, but the court disagreed, stating that the deficiency could be litigated in cases filed by the shareholders as transferees. The court emphasized that the corporation had no ongoing business or goodwill to protect, making the due process argument inapposite.

Practical Implications

This decision clarifies that dissolved corporations must act promptly to address tax disputes, as they are limited by state law in their capacity to litigate. Attorneys should advise clients to resolve tax matters before dissolution or ensure that any necessary legal actions are taken within the statutory period. The ruling also underscores the importance of considering transferee liability as an alternative means to address tax deficiencies when a corporation has been dissolved. Subsequent cases have followed this precedent, reinforcing the jurisdictional limits on dissolved corporations in tax litigation.

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