Whiteco Industries, Inc. v. Commissioner, 65 T. C. 664 (1975)

Outdoor advertising signs can qualify as tangible personal property for the purpose of the investment tax credit under IRC section 38.

Summary

Whiteco Industries, Inc. sought to claim an investment tax credit for its outdoor advertising signs. The Tax Court ruled that these signs constituted tangible personal property under IRC section 48(a)(1)(A), qualifying them for the credit. The decision hinged on the signs being non-permanent structures, designed to be moved and reused, which distinguished them from inherently permanent structures like buildings. This ruling clarified the criteria for tangible personal property, impacting how businesses in similar industries could claim tax credits for their assets.

Facts

Whiteco Industries, Inc. was engaged in the business of providing outdoor advertising using signs placed along major highways. These signs were erected on leased land and consisted of a sign face attached to wooden poles and stringers. The signs were designed to last for the term of advertising contracts, typically 3 to 5 years, and were frequently moved due to lease expirations or changes in land use. The signs could be disassembled and reassembled with minimal damage, with only the portion of poles surrounded by concrete being wasted.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Whiteco's federal corporate income taxes for the years 1967-1971, disallowing the investment tax credit claimed for the outdoor advertising signs. Whiteco petitioned the U. S. Tax Court, which consolidated related cases. The Tax Court ruled in favor of Whiteco, holding that the signs were tangible personal property eligible for the investment credit.

Issue(s)

1. Whether outdoor advertising signs constitute "tangible personal property" under IRC section 48(a)(1)(A), thereby qualifying for the investment tax credit under IRC section 38.

Holding

1. Yes, because the outdoor advertising signs were not inherently permanent structures and met the criteria for tangible personal property as defined by the IRC and interpreted by the court.

Court's Reasoning

The court applied several criteria to determine whether the signs were tangible personal property: mobility, expected length of affixation, ease of removal, potential damage upon removal, and the manner of affixation. The signs were found to be readily movable, not designed for permanent installation, and subject to frequent relocation due to lease terms or changes in land use. The court emphasized that the signs were not “inherently permanent structures,” as they could be disassembled and reassembled with minimal damage, distinguishing them from fixtures like buildings. The court also noted that the legislative history and IRS regulations did not intend to narrowly define tangible personal property, and previous rulings had allowed similar or more permanent structures to qualify for the credit. The Commissioner’s argument that advertising displays were excluded from the credit was rejected, as the legislative intent was unclear and did not specifically address the type of signs used by Whiteco.

Practical Implications

This decision expanded the scope of what constitutes tangible personal property for tax purposes, allowing businesses in the advertising industry to claim investment tax credits for non-permanent structures. It established that the mobility and intended use of a structure are key factors in determining eligibility for the credit. The ruling influenced subsequent cases and IRS rulings, reinforcing the principle that tax law should be applied based on the functional and economic characteristics of property rather than strict adherence to state law definitions of fixtures. Businesses should assess their assets’ mobility and intended use when considering tax credit eligibility, and tax practitioners must consider these factors when advising clients on similar assets.

