***Berger Machine Products, Inc. v. Commissioner, 68 T. C. 358 (1977)***

A statutory merger of active corporations resulting in changes in shareholders' relative ownership percentages does not qualify as a mere change in identity, form, or place of organization under IRC Sec. 368(a)(1)(F), thus disallowing net operating loss carrybacks under IRC Sec. 381(b)(3).

**Summary**

In Berger Machine Products, Inc. v. Commissioner, four related manufacturing and sales corporations merged into a newly formed entity, Berger Industries, Inc. , resulting in changes in shareholders' ownership percentages. The issue was whether this merger qualified as a reorganization under IRC Sec. 368(a)(1)(F), which would permit Berger Industries to carry back a net operating loss to the pre-merger years under IRC Sec. 381(b)(3). The Tax Court held that the merger was not a mere change in identity, form, or place of organization due to the shift in shareholders' ownership interests, and thus disallowed the carryback. The decision emphasized that for an "F" reorganization, there must be complete identity of shareholders and their proprietary interests before and after the merger.

**Facts**

Four corporations, Berger Machine Products, Inc. , Berger Tube Corp. , E. T. P. Labs, Inc. , and E. T. P. , Inc. , owned or controlled by related individuals, were merged into Berger Industries, Inc. , effective December 26, 1966. The merger resulted in changes in the relative ownership percentages of the shareholders. Berger Industries reported a net operating loss for the taxable year ending December 29, 1969, and sought to carry this loss back to the pre-merger years of the four corporations.

**Procedural History**

The Commissioner determined deficiencies in the income tax of the four corporations for the year 1966. Berger Industries, Inc. , as the successor corporation, petitioned the United States Tax Court for relief, seeking to carry back the 1969 net operating loss. The Tax Court consolidated the cases and issued a decision against the petitioners, holding that the merger did not qualify as a reorganization under IRC Sec. 368(a)(1)(F).

**Issue(s)**

1. Whether the statutory consolidation of four corporations into a single successor corporation constitutes a reorganization within the meaning of IRC Sec. 368(a)(1)(F), allowing the carryback of post-consolidation losses to pre-consolidated years under IRC Sec. 381(b)(3).

**Holding**

© 2025 SCOTUSreports.com. All rights reserved. 

1. No, because the merger resulted in a substantial change in the percentage of ownership in the acquiring corporation by the shareholders of the merged corporations, and thus was not a mere change in identity, form, or place of organization under IRC Sec. 368(a)(1)(F).

**Court's Reasoning**

The court analyzed the statutory language of IRC Sec. 368(a)(1)(F), which defines a reorganization as a mere change in identity, form, or place of organization. The court found that the merger of active corporations into a new entity, resulting in a change in shareholders' ownership percentages, went beyond a mere change. The court rejected the petitioner's attempt to apply the attribution rules of IRC Sec. 318 to negate the differences in ownership percentages. The court also distinguished the case from Aetna Casualty & Surety Co. v. United States, noting that Aetna did not involve a statutory merger of active corporations. The dissent argued that the shifts in proprietary interest were minor and that the merger should qualify as an "F" reorganization.

**Practical Implications**

This decision impacts how mergers are structured to qualify for net operating loss carrybacks. It clarifies that for an "F" reorganization, there must be complete identity of shareholders and their proprietary interests before and after the merger. Practitioners must carefully consider the impact of mergers on shareholders' ownership percentages when planning for tax benefits such as loss carrybacks. The ruling has been influential in subsequent cases and has shaped IRS guidance, such as Rev. Rul. 75-561, which outlines conditions for "F" reorganizations. The decision underscores the importance of aligning corporate restructuring with the specific requirements of the tax code to achieve desired tax outcomes.

© 2025 SCOTUSreports.com. All rights reserved. 