***Pulver Roofing Co. , Inc. v. Commissioner, 70 T. C. 1001 (1978)***

The IRS may retroactively revoke a ruling that a profit-sharing plan is qualified if unforeseen changes result in discrimination favoring a prohibited group, unless such revocation constitutes an abuse of discretion.

**Summary**

Pulver Roofing Co. had a profit-sharing plan approved by the IRS in 1961, excluding union members and part-time employees. By the 1970s, due to shifts in the company's business, the plan primarily benefited officers and highly compensated employees. The IRS retroactively revoked its earlier ruling, finding the plan discriminatory under IRC section 401(a)(3)(B). The Tax Court upheld this revocation, determining that the changes were significant enough to justify the IRS's action and did not constitute an abuse of discretion. The case highlights the IRS's authority to retroactively change rulings and the importance of maintaining non-discriminatory plan coverage despite unforeseen business changes.

**Facts**

Pulver Roofing Co. adopted a profit-sharing plan in 1958, which was amended in 1961 to exclude union members and employees working less than 20 hours per week or 5 months per year. The IRS approved the plan as qualified under IRC section 401(a) in 1961. Over time, the company's business shifted from residential to commercial roofing, reducing the number of non-union employees eligible for the plan. By the tax years in question (1970-1973), the plan primarily covered officers and highly compensated employees, prompting the IRS to retroactively revoke its earlier ruling and deny deductions for contributions made under the plan.

**Procedural History**

Pulver Roofing Co. challenged the IRS's deficiency notices for the tax years ending 1970, 1971, 1972, and 1973. The case was heard by the United States Tax Court, where the company argued against the retroactive revocation of the IRS's 1961 ruling. The Tax Court upheld the IRS's decision, finding that the changes in the company's business justified the retroactive revocation.

**Issue(s)**

1. Whether the IRS abused its discretion in retroactively revoking its earlier ruling that Pulver Roofing Co. 's profit-sharing plan was qualified under IRC section 401(a)(3)(B)?

2. Whether the plan's coverage discriminated in favor of officers, shareholders, supervisors, or highly compensated employees in violation of IRC section 401(a)(3)(B)?

 

## Holding

1. No, because the IRS's retroactive revocation was not an abuse of discretion given the significant changes in the company's business and the resulting discriminatory coverage of the plan.

2. Yes, because the plan's coverage favored the prohibited group, as the majority of participants were officers and highly compensated employees, violating IRC section 401(a)(3)(B).

## Court's Reasoning

The Tax Court analyzed the IRS's authority to retroactively revoke rulings under IRC section 7805(b) and found that the changes in Pulver Roofing Co. 's business were significant enough to justify the revocation. The court noted that the plan's coverage had shifted to favor officers and highly compensated employees, as only a small percentage of non-union employees were covered by the plan during the years in question. The court rejected the argument that unforeseen business changes should preclude the IRS from revoking its ruling, stating that such changes do not automatically justify continued qualification of the plan. The court also distinguished this case from others where plans remained qualified despite changes, noting that the changes in Pulver's business were permanent and substantial. The majority opinion emphasized that the IRS's revocation was not arbitrary, given the clear shift in plan coverage favoring the prohibited group.

## Practical Implications

This decision underscores the IRS's authority to retroactively revoke rulings on the qualification of pension and profit-sharing plans when significant changes occur that result in discriminatory coverage. Employers must monitor their plans to ensure they remain non-discriminatory, even in the face of unforeseen business changes. The case also highlights the importance of maintaining comprehensive records to demonstrate compliance with IRS requirements. Subsequent cases have cited Pulver Roofing Co. when addressing the IRS's discretion in revoking rulings and the need for employers to adapt their plans to changing business conditions to avoid discrimination. This decision has influenced legal practice by emphasizing the need for ongoing review and potential adjustments to employee benefit plans to maintain their qualified status.

 