Ourisman v. Commissioner, 82 T.C. 171 (1984)

A corporation formed solely to comply with state usury laws can be considered a nontaxable agent of its partners, allowing the partners to claim losses generated by the corporate activity, provided the indicia of agency are present, even if the relationship relies on the partners' control of the corporation.

Summary

The case addresses whether a corporation formed to obtain construction financing, due to District of Columbia usury laws, was a true agent of a partnership for tax purposes. The Tax Court held that the corporation was an agent, allowing the partnership to claim losses from the building project. The court applied the principles from *National Carbide Corp. v. Commissioner*, finding that the corporation acted in the partnership's name, bound the partnership, transmitted loan funds to the partnership, and the income was attributable to the partnership's efforts and assets. Although the partners controlled the corporation, the court emphasized that the corporation's activities were consistent with an agency relationship. The decision illustrates a limited exception to the general rule that a corporation is a separate taxable entity.

Facts

Florenz and Betty Ourisman, in partnership with Donohoe Construction Co., leased property to build an office building. Because of a District of Columbia law limiting interest rates, the partners formed Wisconsin-Jenifer, Inc. (the corporation) to secure construction financing. The corporation acted as a nominal debtor; however, the partnership was the actual owner of the property. The corporation's board resolved that it would act as a nominee for the partnership. The partnership assigned the leasehold to the corporation, and the corporation obtained construction loans from American Security & Trust Co. (AS & T) and later permanent financing from Jefferson Federal Savings & Loan Association. All expenses and income were handled by the partnership, with the corporation functioning solely as a nominal entity. The corporation never had its own bank account, and all the funds went through the partnership. The partnership claimed losses on its tax returns, which the IRS disallowed, asserting the losses were attributable to the corporation.

Procedural History

The Commissioner of the IRS disallowed the partnership's deductions for losses related to the office building. The Ourismans challenged the IRS's decision in the United States Tax Court.

Issue(s)

1. Whether the losses generated by the construction and operation of the office building are attributable to the partnership or the corporation.

2. If the losses are attributable to the corporation, whether the corporation's reconveyance of the leasehold to the partnership constituted a distribution in liquidation.

3. Whether the corporation was a collapsible corporation.

Holding

1. Yes, the losses are attributable to the partnership because the corporation was acting as the partnership's agent.

2. Not addressed, as the decision regarding the agency status of the corporation was dispositive.

3. Not addressed, as the decision regarding the agency status of the corporation was dispositive.

Court's Reasoning

The Tax Court relied on the Supreme Court's decisions in *Moline Properties, Inc. v. Commissioner* and *National Carbide Corp. v. Commissioner* which established the principle that a corporation is generally treated as a separate taxable entity. However, the court recognized an exception for a true corporate agent. The court examined the six factors outlined in *National Carbide* to determine if a true agency relationship existed. The court held that the corporation acted as an agent because it acted in the partnership's name and for its account, bound the partnership, transmitted funds to the partnership, and the project's income was attributable to the partnership. The court also considered the fact that the corporation's activities were consistent with the duties of an agent. The Court distinguished the case from situations in which the corporation had a business purpose beyond mere agency or where the corporation acted for more than just the partners.

The Court acknowledged that the partners controlled the corporation, but it held that the other indicia of agency were sufficient to overcome this factor. The Court emphasized that the corporation was formed to satisfy the lender's requirements related to usury laws and not to gain the benefits of the corporate form, such as limited liability.

The Court explicitly disagreed with the Fifth Circuit's interpretation of *National Carbide* in *Roccaforte v. Commissioner*, where the Court held that a corporation could not be considered an agent when the agency was, to some extent, based on the shareholders' control. The Tax Court emphasized that the Supreme Court did not intend for the *National Carbide* factors to be applied mechanically, and a finding of agency could still exist despite shareholder control if the other agency factors were present.

Practical Implications

This case is significant for attorneys and tax professionals because it defines the parameters of the corporate nominee exception. It helps determine when a corporation, created for specific non-tax purposes, will be treated as an agent of its owners. It is most relevant when dealing with real estate development and situations in which usury laws or other regulations require the formation of a corporation to obtain financing or hold title. The case highlights the importance of clearly documenting the agency relationship, ensuring the corporation's activities are consistent with an agent's role, and avoiding any actions that suggest the corporation is acting as a principal. Legal practitioners should note that this case is not binding on all courts, as it conflicts with the holding in *Roccaforte*. Future cases may turn on the jurisdiction of the appeal.

