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

A corporation can be treated as a nontaxable agent of a partnership for federal income tax purposes if it acts solely as the partnership's nominee, even when the corporation is owned and controlled by the partnership.

Summary

Florenz and Betty Joan Ourisman, through a partnership, developed an office building in Washington, D. C. , using a corporation to hold record title and secure loans due to local usury laws. The Tax Court held that the corporation was the partnership's agent for tax purposes, allowing the partnership to claim losses generated by the project. This decision hinged on the corporation acting solely as the partnership's nominee and not engaging in any substantive business activities. Despite the corporation being wholly owned by the partnership, the court found sufficient evidence of an agency relationship, affirming the principle that a corporation can act as a nontaxable agent if it acts solely in that capacity.

Facts

In 1969, Florenz Ourisman and Donohoe Construction Co. entered into a 99-year ground lease to develop an office building in Washington, D. C. They formed a partnership, 5225 Wisconsin Associates, for the project. Due to local usury laws limiting interest rates on loans to non-corporate entities, they created a corporation, Wisconsin-Jenifer, Inc. , to hold record title to the leasehold and secure construction financing. The corporation acted solely as a nominee for the partnership, holding no bank account, issuing no stock, and having no employees. All project-related activities and financial transactions were managed by the partnership, which also repaid the loans.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in the Ourismans' federal income taxes for 1970-1972, disallowing partnership losses and attributing them to the corporation. The Ourismans petitioned the U. S. Tax Court, arguing that the corporation was merely their agent. The Tax Court, following its precedent in Roccaforte v. Commissioner, held that the corporation was the partnership's agent for tax purposes, allowing the partnership to claim the losses.

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 attributable to the corporation, whether its reconveyance of record title to the partnership constituted a distribution in liquidation.
3. Whether the corporation was a collapsible corporation under section 341(b) of the Internal Revenue Code.

Holding

1. Yes, because the corporation acted solely as the partnership's agent, holding record title and securing loans, while the partnership managed all substantive aspects of the project and shouldered the economic risks.
2. Not addressed, as the court found the losses attributable to the partnership.
3. Not addressed, as the court found the losses attributable to the partnership.

Court's Reasoning

The court applied the principles from Moline Properties, Inc. v. Commissioner and National Carbide Corp. v. Commissioner, which outline the criteria for determining if a corporation is an agent for its shareholders. The court found that Wisconsin-Jenifer, Inc. met the criteria for being an agent, as it acted in the name and for the account of the partnership, bound the partnership by its actions, transmitted receipts to the partnership, and had no business purpose beyond acting as an agent. The court acknowledged the corporation's ownership by the partnership but emphasized that the agency relationship was established by evidence independent of such control. The court also rejected the Fifth Circuit's reversal of a similar case, Roccaforte v. Commissioner, arguing that the fifth factor of National Carbide should not be determinative in all cases. The dissent argued that the corporation should be treated as a separate taxable entity due to its formation for a business purpose and the principle that choosing the corporate form should entail accepting tax consequences.

Practical Implications

This decision allows partnerships to use corporations as nominees to comply with local laws without incurring separate corporate taxation, provided the corporation acts solely as an agent. It clarifies that ownership and control by the principal do not automatically preclude agency status for tax purposes. Practitioners should carefully document the agency relationship and ensure the corporation does not engage in substantive business activities. The decision may influence how partnerships structure real estate development deals to navigate local legal restrictions while optimizing tax treatment. Subsequent cases like Carver v. United States and Raphan v. United States have similarly recognized corporate agency in transactions involving unrelated parties, reinforcing this principle.

