Southern Pacific Transportation Co. v. Commissioner, 84 T. C. 367 (1985)

A corporation that contractually assumes the liabilities of another in a merger can be held liable as a transferee for tax deficiencies, even if it is also primarily liable under state law.

Summary

In Southern Pacific Transportation Co. v. Commissioner, the U. S. Tax Court ruled that Southern Pacific Transportation Co. (SPTC) was liable as a transferee for the tax deficiencies of Southern Pacific Co. (old SP) following a merger. The key fact was that SPTC had contractually assumed old SP's liabilities in the merger agreement. The court held that this contractual assumption established transferee liability, despite SPTC also being primarily liable under Delaware law. This case underscores that contractual obligations can create transferee liability independent of primary liability under state law, and it rejected SPTC's motion to dismiss the IRS's notice of transferee liability.

Facts

Old SP was the common parent of an affiliated group that filed consolidated federal income tax returns for 1962-1965. In 1969, a merger occurred where SPTC acquired all of old SP's assets, old SP's shareholders became the sole shareholders of new SP (formerly S. P. Inc.), and old SP was dissolved. Under the merger agreement, SPTC expressly assumed all of old SP's liabilities. In 1972, the IRS issued notices of deficiency to the old SP affiliated group and a notice of transferee liability to SPTC for the same deficiencies. SPTC moved to dismiss the transferee notice, arguing it was invalid since it was primarily liable for old SP's obligations under Delaware law and the merger agreement.

Procedural History

The IRS issued a statutory notice of deficiency to new SP and a notice of transferee liability to SPTC on June 28, 1972. SPTC filed a motion to dismiss for lack of jurisdiction and, in the alternative, to substitute itself as petitioner in place of new SP. The U. S. Tax Court denied both motions.

Issue(s)

1. Whether SPTC can be held liable as a transferee for the tax deficiencies of old SP when it has contractually assumed old SP's liabilities in a merger, despite also being primarily liable under state law.

Holding

1. Yes, because the contractual assumption of liabilities in the merger agreement establishes transferee liability independent of primary liability under state law.

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Court’s Reasoning

The court reasoned that while Delaware law imposed primary liability on SPTC as the surviving corporation, the contractual assumption of old SP’s liabilities under the merger agreement also made SPTC liable as a transferee at law. The court distinguished this case from Oswego Falls and Saenger, where no such contractual assumption existed. It relied on Turnbull, Inc. and Texsun Supply, where contractual assumptions supported transferee liability despite primary liability under state law. The court held that the contractual obligation to pay old SP’s liabilities was sufficient to establish transferee status, even without a separate transferee agreement. The court rejected SPTC’s argument that primary and transferee liability were mutually exclusive, noting that primary liability is personal while transferee liability applies only to the transferred assets.

Practical Implications

This decision clarifies that a successor corporation in a merger can be liable as a transferee for the predecessor’s tax deficiencies if it contractually assumes those liabilities, regardless of its primary liability under state law. Attorneys advising on mergers should ensure clients understand that contractual assumptions of liabilities can create transferee exposure to tax debts. The IRS may pursue transferee liability against a successor corporation even if it is already primarily liable. This case may encourage the IRS to more aggressively pursue transferee liability in merger situations where liabilities are contractually assumed. Subsequent cases like Turnbull, Inc. have followed this reasoning, reinforcing the principle that contractual obligations can establish transferee liability independent of state law.

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