Fisher Co. 's, Inc. v. Commissioner, 88 T. C. 1322 (1987)

The two-thirds disallowance of antitrust settlement payments under IRC § 162(g) applies only to payments made after a civil action is filed and for violations within the period of criminal conviction or related violations if an injunction was obtained.

Summary

In Fisher Co. 's, Inc. v. Commissioner, the court addressed the tax deductibility of payments made by Fisher Mills to settle antitrust claims and the tax implications of a leasehold obligation's assumption in an asset sale. The court ruled that the two-thirds disallowance under IRC § 162(g) applied to payments for violations during the period of criminal conviction but not to pre-litigation settlements or periods outside the conviction. Additionally, the court held that the assumption of a leasehold obligation by a buyer increased the seller's amount realized upon asset sale. This case clarifies the scope of the tax disallowance for antitrust settlements and the tax treatment of leasehold obligations in asset transactions.

Facts

Fisher Mills, a subsidiary of Fisher Co. 's, Inc. , was convicted of antitrust violations for the period from August 15, 1967, to December 31, 1969, following a nolo contendere plea. Subsequently, Fisher Mills settled civil antitrust claims with American Bakeries and Interstate Brands Corp. for violations alleged over a longer period. The settlement with ITT Continental Baking Co. occurred before any civil action was filed. Additionally, Fisher Services, Inc. sold assets to Golden Grain Macaroni Co. , which assumed a $500,000 leasehold obligation to repair a roof.

Procedural History

The IRS issued a notice of deficiency for Fisher Co. 's, Inc. 's 1977 and 1979 tax years, disallowing certain deductions related to antitrust settlement payments and adjusting the income from the asset sale. Fisher Co. 's, Inc. petitioned the Tax Court to contest these adjustments.

Issue(s)

1. Whether the two-thirds disallowance under IRC § 162(g) applies to limit the deduction of payments made by Fisher Mills to American Bakeries and Interstate for antitrust violations after a criminal conviction but before an injunction was obtained?
2. Whether the two-thirds disallowance under IRC § 162(g) applies to limit the deduction of payments made by Fisher Mills to ITT before the commencement of any civil action under the Clayton Act?
3. Whether the purchase price received by Societe Candy Co. from the sale of its assets to Golden Grain Macaroni Co. included $500,000 for the assumption of Societe's leasehold obligation to repair the roof?

Holding

1. Yes, because the payments were made in settlement of a civil action under the Clayton Act, but the disallowance only applies to the period of the criminal conviction (August 15, 1967, to December 31, 1969) since no injunction was obtained.
2. No, because the payments were made before any civil action was filed, and thus do not fall within the scope of IRC § 162(g).
3. Yes, because the assumption of the leasehold obligation by Golden Grain constituted income to Societe Candy Co. , increasing the amount realized from the asset sale by $500,000.

Court's Reasoning

The court's decision was based on the statutory language and regulations of IRC § 162(g), which limits the disallowance to payments made after a civil action is filed under the Clayton Act. The court emphasized that the disallowance applies only to the period of the criminal conviction or related violations if an injunction was obtained, as defined in the regulations. The court rejected the IRS's broader "economic objective" test for defining related violations. For the ITT settlement, the court held that since no civil action was filed, the payments were fully deductible. Regarding the leasehold obligation, the court applied the principle that the discharge of a liability by another party constitutes income to the beneficiary, referencing cases like United States v. Hendler.

Practical Implications

This decision provides clarity on the deductibility of antitrust settlement payments, emphasizing the necessity of a filed civil action and the specific period of criminal conviction for the two-thirds disallowance to apply. It encourages pre-litigation settlements by allowing full deductions for such agreements. For tax practitioners, this case underscores the importance of distinguishing between settlement payments for different periods and the necessity of an injunction for extending disallowance to related violations. In terms of leasehold obligations, the case confirms that the assumption of such obligations by a buyer in an asset sale increases the seller's taxable income, impacting how such transactions are structured and reported for tax purposes. Later cases have referenced this decision when addressing similar issues of tax deductibility and the treatment of leasehold obligations in asset sales.

