Atlantic Veneer Corp. v. Commissioner, 85 T. C. 1075 (1985)

A clear and affirmative election statement must be filed to adjust the basis of partnership property under sections 754 and 743(b), even for foreign partnerships.

Summary

Atlantic Veneer Corp. purchased an interest in a German partnership, which under German law, automatically adjusted the basis of its assets. Atlantic Veneer sought to use this adjusted basis for U. S. tax purposes but failed to file a clear election statement as required by section 754. The U. S. Tax Court held that the mere attachment of the German partnership's tax return in German, without an explicit election statement, did not constitute a valid election. The court emphasized the necessity of a clear statement of intent to elect basis adjustments, highlighting that without it, Atlantic Veneer could not benefit from the increased depreciation deductions based on the stepped-up basis.

Facts

Atlantic Veneer Corporation purchased a one-third interest in a German limited partnership (KG) on January 1, 1973, for approximately $5,270,000, which exceeded the adjusted basis of its share of the partnership's assets by about $3,255,000. Under German law, the partnership automatically stepped up the basis of its assets to reflect this excess. Atlantic Veneer reported its distributive share of income using this stepped-up basis on its U. S. tax returns and attached the German partnership's tax return, in German, without translation.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Atlantic Veneer's taxes for the years 1976, 1977, and 1978, disallowing depreciation deductions based on the stepped-up basis. Atlantic Veneer filed a petition with the U. S. Tax Court, contesting these deficiencies. The court found that no valid election under section 754 had been made and entered a decision for the respondent.

Issue(s)

1. Whether Atlantic Veneer made a valid election under section 754 to adjust the basis of the partnership property under section 743(b).

Holding

1. No, because Atlantic Veneer failed to file a clear and affirmative election statement as required by section 754, merely attaching the German partnership's return in German was insufficient to constitute a valid election.

Court's Reasoning

© 2025 SCOTUSreports.com. All rights reserved.

The court reasoned that section 754 requires a partnership to file a written statement with its partnership return to elect basis adjustments under section 743(b). The German partnership was not required to file a U. S. partnership return because it had no U. S. trade or business or U. S. source income. However, the court found that the absence of this requirement did not exempt the partnership from making the necessary election to benefit from U. S. tax adjustments. The court emphasized that an election must be clearly made and documented, noting that the mere attachment of a foreign tax return, especially in a foreign language without translation, did not satisfy the requirement for a valid election. The court cited previous cases indicating that an election must show a clear intent to be bound by the election, which was not evident in Atlantic Veneer's filings.

Practical Implications

This decision underscores the importance of explicit and clear election statements for U. S. tax purposes, particularly when dealing with foreign partnerships. Practitioners must ensure that all necessary elections are properly documented and filed, even if the foreign partnership's actions under its own legal system might suggest an adjustment. This case also highlights the need for clear communication in tax filings, as attachments in foreign languages without translation do not suffice for making valid elections. Subsequent cases and amendments to the tax code have aimed to clarify filing requirements for foreign partnerships, reflecting the issues raised in this case.

© 2025 SCOTUSreports.com. All rights reserved.