***Fischer Industries, Inc. and Subsidiaries v. Commissioner of Internal Revenue, 87 T. C. 116 (1986)***

A taxpayer must clearly express its intent to elect the LIFO method on the original tax return to substantially comply with IRS regulations.

**Summary**

In Fischer Industries, Inc. v. Commissioner, the U. S. Tax Court held that Mayfran, a subsidiary of Fischer Industries, did not effectively elect the LIFO method for its 1975 tax year due to its failure to clearly express this intent on the original tax return. Despite correctly using LIFO and providing detailed work papers during an audit, the court ruled that a mere failure to file Form 970 is not fatal, but the absence of a clear expression of intent on the return was critical. This case underscores the importance of adhering to procedural requirements when electing the LIFO method, emphasizing that such elections must be evident on the original return to meet the substantial compliance standard.

**Facts**

Mayfran, a subsidiary of Fischer Industries, switched its inventory accounting from FIFO to LIFO for the 1975 tax year. Fischer Industries correctly calculated Mayfran's inventory under LIFO but did not file Form 970 with the 1975 return. The necessary information was, however, included in the company's financial statements and accountants' work papers, which were provided to the IRS during an audit in 1979. Fischer later attempted to perfect the election by filing Form 970 with an amended 1975 return in 1986, after the trial had commenced.

**Procedural History**

The Commissioner determined deficiencies in Fischer's federal income taxes for several years, leading Fischer to petition the U. S. Tax Court. The sole issue before the court was whether Mayfran effectively elected the LIFO method for 1975. After a trial and subsequent hearings, the court ruled that Mayfran did not elect LIFO for 1975 due to the absence of a clear expression of intent on the original 1975 return.

**Issue(s)**

1. Whether Mayfran's failure to file Form 970 with its 1975 return is fatal to its LIFO election.
2. Whether Mayfran substantially complied with IRS regulations for electing LIFO for 1975 by correctly using LIFO and providing required information during an audit.

**Holding**

1. No, because the regulations have been amended to allow alternative methods of

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expressing the LIFO election, and mere failure to file Form 970 is not fatal.
2. No, because Mayfran did not give clear notice of its intent to elect LIFO on its 1975 return, and providing information during an audit does not constitute substantial compliance.

**Court's Reasoning**

The court applied the principle of substantial compliance, noting that while the strict rule of Textile Apron Co. v. Commissioner no longer applies, a clear expression of intent to elect LIFO must appear on the original return. The court found that Fischer's failure to answer a question on the 1975 return about changes in inventory accounting, coupled with the explicit mention of FIFO, did not clearly indicate a switch to LIFO. The court emphasized that providing financial statements and work papers during an audit did not satisfy the requirement for a clear expression of intent on the return. The court also rejected Fischer's argument that filing Form 970 with an amended return in 1986 perfected the election, as this was not done as soon as practicable. The court's decision reflects a policy favoring clear expressions of intent on original returns for significant elections like LIFO, which have long-term effects.

**Practical Implications**

This decision reinforces the necessity for taxpayers to clearly indicate elections on original tax returns to ensure compliance with IRS regulations. For similar cases, practitioners should advise clients to file the necessary forms or provide clear notice on the return when electing LIFO. The ruling may impact businesses by requiring stricter adherence to procedural formalities, potentially affecting their ability to use LIFO for tax purposes. This case has been cited in subsequent decisions, such as Atlantic Veneer Corp. v. Commissioner, to uphold the clear expression requirement for tax elections. It serves as a reminder of the importance of timely and clear communication with the IRS regarding significant accounting method changes.

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