Gunther v. Commissioner, 92 T. C. 39 (1989)

Section 351 of the Internal Revenue Code takes precedence over Section 304 when both apply to a corporate reorganization involving the exchange of stock for stock and securities.

Summary

In Gunther v. Commissioner, the Tax Court held that the exchange of stock in Galesburg Builders Supply Co. for stock and debentures in Gunther Construction Co. was governed by Section 351, which allows nonrecognition of gain or loss when property is transferred to a corporation in exchange for stock or securities, rather than Section 304, which treats certain stock purchases as redemptions. The court emphasized the statutory language and legislative history that prioritize Section 351 over Section 304 in such transactions, reinforcing the principle that specific statutory provisions can supersede more general ones when they conflict.

Facts

The Gunther family controlled both Gunther Construction Co. (Construction) and Galesburg Builders Supply Co. (Builders). In 1981, the family transferred all their Builders stock to Construction in exchange for Construction stock and 11-year debentures. The purpose was to reorganize the companies, ensure Builders' survival, and maintain Construction's access to quality concrete. The transaction was structured to be tax-free under Section 351, and the parties did not report any gain or loss on the exchange.

Procedural History

The IRS challenged the tax treatment, asserting the transaction should be treated as a redemption under Section 304, resulting in dividend treatment. The Tax Court ruled in favor of the taxpayers, applying Section 351 to the transaction. The IRS did not appeal the decision.

Issue(s)

1. Whether the exchange of Builders stock for Construction stock and debentures is governed by Section 351 or Section 304 of the Internal Revenue Code?

Holding

1. Yes, because the literal language of Section 351 and the legislative history indicate that it takes precedence over Section 304 when both apply to a transaction involving an exchange of stock for stock and securities.

Court's Reasoning

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The court relied on the statutory language of Sections 351 and 304, emphasizing the

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