Lucky Stores, Inc. v. Commissioner, 92 T. C. 1151 (1989)

A taxpayer must be engaged in the trade or business of providing transportation services to third parties to claim an investment tax credit for property used in that business.

Summary

Lucky Stores, a retail food chain, sought investment tax credits under I. R. C. § 38 for property at its distribution centers, claiming it was used in its transportation business. The Tax Court held that Lucky Stores was not entitled to the credits because it was not in the business of providing transportation services to third parties. The court defined "substantially full-time" employment for WIN credit eligibility as three-quarters of the normal work week in the retail food industry and allowed retroactive certifications for WIN credits. This ruling clarifies the scope of the investment tax credit and provides guidance on WIN credit eligibility.

Facts

Lucky Stores, Inc. , operated over 428 retail food stores across 29 states and owned distribution centers in several locations. The company claimed investment tax credits under I. R. C. § 38 for property at these centers, such as paved areas, cooler room panels, and railroad spur tracks, arguing they were used in its transportation business. Lucky Stores' trucks only delivered goods to its own stores and from wholesale vendors to its distribution centers. Additionally, Lucky Stores hired employees eligible for welfare assistance and sought WIN credits under I. R. C. §§ 40, 50A, and 50B for fiscal years beginning before 1982, obtaining certifications in 1985.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Lucky Stores' federal income tax for fiscal years ending January 28, 1979, February 3, 1980, February 1, 1981, and January 31, 1982. Lucky Stores filed petitions with the Tax Court challenging these deficiencies and claiming entitlement to investment tax credits and WIN credits. The case was submitted fully stipulated, and the Tax Court issued its opinion on May 30, 1989, as corrected on June 7, 1989.

Issue(s)

1. Whether Lucky Stores is entitled to an investment tax credit under I. R. C. § 38 for property at its distribution centers.
2. Whether Lucky Stores is entitled to WIN credits under I. R. C. §§ 40, 50A, and 50B for wages paid to certain employees.

Holding

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1. No, because Lucky Stores was not engaged in the trade or business of furnishing transportation services to third parties.
2. Yes, because the employees worked “substantially full-time” as defined by the court, and retroactive certifications were permissible under the applicable law.

Court’s Reasoning

The court relied on the precedent set in *Hub City Foods, Inc. v. Commissioner*, holding that transporting one’s own goods does not constitute a trade or business of furnishing transportation services. The court interpreted I. R. C. § 48 to require that a taxpayer must offer transportation services to third parties to claim the credit. For the WIN credits, the court defined “substantially full-time” employment as three-quarters of the normal work week in the retail food industry, based on national statistics for nonsupervisory hourly employees. The court also allowed retroactive certifications for WIN credits, noting that Congress did not specify a time requirement for certification before the 1981 amendments to I. R. C. § 51.

Practical Implications

This decision clarifies that companies must provide transportation services to third parties to claim investment tax credits under I. R. C. § 38 for related property. It affects how similar cases are analyzed, emphasizing the need for a clear distinction between a company’s primary business and ancillary activities. The ruling on WIN credits provides a flexible standard for “substantially full-time” employment that varies by industry, impacting how employers calculate eligibility for these credits. The allowance of retroactive certifications for WIN credits has implications for employers seeking to claim these credits for past hires. Subsequent cases, such as those involving the targeted jobs tax credit under I. R. C. § 51, have distinguished this ruling based on the amendments made by the Economic Recovery Tax Act of 1981.

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