Baicker v. Commissioner, 93 T. C. 316, 1989 U. S. Tax Ct. LEXIS 124, 93 T. C. No. 28 (1989)

Investment tax credits are not carried over to the transferee in a divisive reorganization unless specifically provided for by statute.

Summary

In Baicker v. Commissioner, the U. S. Tax Court ruled that a subchapter S corporation, PGT Geophysics, Inc. (Geophysics), could not carry over the recaptured investment tax credit (ITC) from its predecessor, Princeton Gamma-Tech, Inc. (PGT), following a tax-free divisive reorganization under section 368(a)(1)(D). The court determined that neither section 381 of the Internal Revenue Code nor any general non-statutory principle supported the carryover of the ITC. This decision emphasized the strict statutory requirements for carryovers in reorganizations and the limited scope of tax attributes that can be transferred without specific legal authorization.

Facts

Joseph A. and Maxine H. Baicker were shareholders in Princeton Gamma-Tech, Inc. (PGT), which had claimed investment tax credits on assets used by its Geophysics Division. In July 1983, PGT transferred these assets to a newly formed subchapter S corporation, PGT Geophysics, Inc. (Geophysics), in a tax-free divisive reorganization under section 368(a)(1)(D). PGT recaptured a portion of the ITC due to the early termination of its use of the assets. Geophysics continued to use these assets in the same manner as PGT had. The Baickers claimed a pro rata share of the ITC on their 1983 amended tax return, asserting that the credit was carried over from PGT to Geophysics.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in the Baickers' 1983 income tax and disallowed the claimed ITC. The Baickers petitioned the U. S. Tax Court, seeking a determination of an overpayment. The case was submitted on a stipulation of facts. The Tax Court ultimately held that Geophysics was not entitled to the ITC carryover.

Issue(s)

1. Whether Geophysics, as the successor to PGT in a tax-free divisive reorganization, became entitled to the investment tax credit as a corporate attribute of PGT.
2. Whether the assets transferred to Geophysics qualified as "new" or "used" section 38 property, thus entitling Geophysics to an investment tax credit based on their acquisition.

Holding

1. No, because neither section 381 nor any other provision of law authorized the carryover of the recaptured investment tax credit in a divisive reorganization where the transferee did not acquire substantially all of the transferor's assets.
2. No, because the assets were neither "new" nor "used" section 38 property in the hands of Geophysics, as they retained PGT's basis and had been previously used by PGT.

Court's Reasoning

The court analyzed the statutory provisions governing investment tax credits and corporate reorganizations. It noted that section 381, which outlines the carryover of tax attributes in certain reorganizations, did not apply to divisive reorganizations under section 368(a)(1)(D) because PGT's taxable year did not end on the date of the transfer, and Geophysics did not acquire substantially all of PGT's assets. The court also rejected the argument that the assets qualified as "new" or "used" section 38 property under sections 48(b) and 48(c), respectively, since they retained PGT's basis and had been previously used. The court emphasized that without specific statutory authority, no general principle justified the carryover of the ITC, even though Geophysics continued the same business with the same assets. The court found no applicable non-statutory principle supporting the carryover and declined to infer such a principle from the absence of specific statutory provisions.

Practical Implications

This decision clarifies that investment tax credits are not automatically carried over in divisive reorganizations unless explicitly provided for by statute. Tax practitioners must carefully review the specific statutory provisions applicable to reorganizations and the types of tax attributes that can be transferred. The ruling underscores the importance of ensuring that all statutory conditions for carryovers are met, particularly the requirement that the transferee acquires substantially all of the transferor's assets. Businesses considering divisive reorganizations should be aware that they may not benefit from previously claimed tax credits unless they meet the stringent requirements of section 381 or other specific legal provisions. This case may influence future reorganizations and tax planning strategies, as companies will need to consider the potential loss of tax attributes when structuring such transactions.