First Chicago Corp. v. Commissioner, 96 T. C. 421 (1991)

A consolidated group of corporations cannot aggregate their shareholdings to meet the 10% voting stock requirement for claiming a foreign tax credit under section 902.

Summary

First Chicago Corporation and its subsidiaries sought to aggregate their shareholdings in a Dutch bank to claim a foreign tax credit under section 902 of the Internal Revenue Code. The Tax Court held that neither section 902 nor the consolidated return regulations allowed such aggregation. The court also found that the subsidiaries were not acting as agents for the parent company in holding the shares. This decision clarifies that each corporation within a consolidated group must individually meet the 10% ownership threshold to claim the credit, impacting how multinational corporations structure their foreign investments and tax planning.

Facts

First Chicago Corporation (P) and its subsidiaries, including First National Bank of Chicago (S), owned shares in N. V. Slavenburg's Bank (F), a Dutch bank. The shares were distributed among S and its affiliates to maximize voting power due to F's voting restrictions. P and its subsidiaries filed consolidated tax returns and claimed foreign tax credits under section 902 based on dividends received from F. The IRS disallowed these credits, asserting that no single entity within the group owned at least 10% of F's voting stock as required by section 902.

Procedural History

The IRS issued a notice of deficiency to P for the 1983 tax year, disallowing the foreign tax credit claims. P filed a petition with the U. S. Tax Court. The court considered the case and issued its opinion on March 7, 1991, ruling against P's aggregation of shareholdings and its agency argument.

Issue(s)

1. Whether section 902 of the Internal Revenue Code permits a consolidated group of corporations to aggregate their shareholdings to meet the 10% voting stock requirement for claiming a foreign tax credit.
2. Whether the consolidated return regulations under section 1502 allow aggregation of shareholdings for the same purpose.
3. Whether the subsidiaries of First Chicago Corporation acted as agents for the parent company in holding the shares of the foreign corporation.

Holding

1. No, because section 902 requires that a single domestic corporation own at least

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10% of the voting stock of the foreign corporation to claim the credit.
2. No, because the consolidated return regulations do not permit aggregation of shareholdings to meet the section 902 requirement.
3. No, because the subsidiaries were not acting as agents of the parent company within the meaning of Commissioner v. Bollinger, and thus their shareholdings could not be attributed to the parent.

Court's Reasoning

The court analyzed the plain language of section 902, which specifies that a "domestic corporation which owns at least 10 percent of the voting stock" of a foreign corporation is eligible for the credit. The court rejected the argument that the legislative history supported aggregation, noting that Congress had not included such a provision in the statute. The court also examined the consolidated return regulations under section 1502, finding them ambiguous but ultimately concluding that they did not override the clear requirement of section 902. The court further considered the agency argument under Commissioner v. Bollinger, finding that the subsidiaries did not meet the criteria for being genuine agents of the parent company. The court emphasized the need for "unequivocal evidence of genuineness" in the agency relationship, which was lacking in this case.

Practical Implications

This decision has significant implications for multinational corporations filing consolidated tax returns. It clarifies that each member of a consolidated group must individually meet the 10% ownership threshold to claim a foreign tax credit under section 902. This ruling may affect how corporations structure their foreign investments, potentially leading to restructuring to concentrate ownership in a single entity to meet the threshold. It also underscores the importance of understanding the limitations of the consolidated return regulations and the strict criteria for establishing an agency relationship for tax purposes. Subsequent cases, such as those involving similar foreign tax credit issues, have referenced this decision in their analysis.

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