Plumb v. Commissioner, 97 T. C. 632 (1991)

A single election under IRC section 172(b)(3)(C) applies to both regular and alternative minimum tax net operating loss carrybacks.

Summary

In Plumb v. Commissioner, the Tax Court ruled that taxpayers cannot selectively waive the carryback period for regular net operating losses (NOLs) while still carrying back alternative minimum tax (AMT) NOLs. The Plumbs attempted to carry back their AMT NOLs from 1984 and 1985 to 1983 while waiving the carryback for their regular NOLs. The court held that the election to waive the carryback period under section 172(b)(3)(C) must apply to both types of NOLs, rendering their attempted election invalid. As a result, both regular and AMT NOLs must be carried back before being carried forward. This decision underscores the necessity of a unified approach to NOL carrybacks under the tax code.

Facts

In 1983, the Plumbs reported liability for the alternative minimum tax. In 1984 and 1985, they sustained regular and AMT NOLs. On their tax returns for those years, they stated they elected to forego the carryback period for the regular NOLs in accordance with section 172(b)(3)(C) and would carry these losses forward. They subsequently applied for tentative refunds for the carryback of their AMT NOLs from 1984 and 1985 to 1983, which they received. The Commissioner challenged these refunds, arguing the Plumbs' election to waive the carryback for regular NOLs should also apply to AMT NOLs.

Procedural History

The Commissioner determined a deficiency in the Plumbs' 1983 income tax, asserting that the Plumbs' election under section 172(b)(3)(C) to waive the carryback period for regular NOLs should also apply to AMT NOLs, thereby disallowing the carryback of AMT NOLs to 1983. The case was submitted to the U. S. Tax Court on a stipulation of facts and exhibits.

Issue(s)

1. Whether the election under section 172(b)(3)(C) to relinquish the carryback period applies to a single carryback period for both regular and AMT NOLs.
2. If there is only one carryback period applicable to both types of NOLs, whether the Plumbs' attempted limited election was ineffective, thus requiring them to carry back both their regular and AMT NOLs before carrying them forward.

Holding

1. Yes, because the court found that section 172(b)(3)(C) provides for a single

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carryback period applicable to both regular and AMT NOLs.
2. Yes, because the Plumbs' attempt to waive the carryback period for only the regular NOLs was invalid, requiring them to carry back both types of NOLs before carrying them forward, as mandated by section 172(b)(2).

Court's Reasoning

The court reasoned that section 172(b)(3)(C) speaks of relinquishing "the entire carryback period with respect to a net operating loss" without differentiating between regular and AMT NOLs. The court emphasized that the legislative history and the language of the statute support the interpretation that a single election under section 172(b)(3)(C) must apply to both types of NOLs. The court also found that the Plumbs' attempt to limit the election to regular NOLs was invalid because it was not legally available. They explicitly stated their intention to waive the carryback for regular NOLs only, which was inconsistent with the available election. As a result, their attempt to carry back AMT NOLs without waiving the carryback for regular NOLs was upheld, requiring both types of NOLs to be carried back to 1983 under section 172(b)(2).

Practical Implications

This decision clarifies that taxpayers must make a single election under section 172(b)(3)(C) that applies to both regular and AMT NOLs, affecting how tax practitioners advise clients on NOL planning. Practitioners must ensure that any election to waive the carryback period is made with full understanding of its implications for both types of NOLs. The ruling underscores the importance of careful tax planning to avoid unintended consequences, such as the invalidation of an election. Subsequent cases have followed this interpretation, reinforcing the necessity of a unified approach to NOL carrybacks. This decision also impacts businesses by requiring them to consider both types of NOLs in their tax strategies, potentially affecting cash flow and tax liability calculations.

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