Times Mirror Co. v. Commissioner, 125 T. C. 1 (2005) (U. S. Tax Court, 2005)

In Times Mirror Co. v. Commissioner, the U. S. Tax Court ruled that a complex transaction involving the sale of Matthew Bender & Co. , a legal publishing company, did not qualify as a tax-free reorganization under Section 368 of the Internal Revenue Code. Times Mirror Co. had structured the sale to Reed Elsevier using a corporate joint venture, aiming to avoid immediate tax on the sale proceeds. The court found that Times Mirror received control over $1. 375 billion in cash rather than solely stock, thus failing to meet the statutory requirements for a reorganization. This decision underscores the importance of substance over form in tax law, impacting how companies structure divestitures to achieve tax benefits.

Parties

Times Mirror Co. (Petitioner) through its subsidiaries, TMD, Inc. and Matthew Bender & Co. , Inc. , were the plaintiffs in this case. The Commissioner of Internal Revenue (Respondent) was the defendant. The procedural designations remained consistent throughout the litigation, which was heard by the U. S. Tax Court.

Facts

Times Mirror Co. , a Los Angeles-based news and information company, decided to divest its legal publishing business, Matthew Bender & Co. , Inc. (Bender), due to market consolidation in the legal publishing industry. Reed Elsevier and Wolters Kluwer expressed interest in acquiring Bender. Times Mirror engaged Goldman Sachs & Co. (GS) as a financial advisor and Gibson, Dunn & Crutcher LLP (GD&C) as legal counsel. They explored various transaction structures, eventually choosing the Corporate Joint Venture (CJV) structure proposed by Price Waterhouse (PW). Under this structure, Reed Elsevier acquired Bender for $1. 65 billion, with Times Mirror receiving control over $1. 375 billion through a limited liability company (LLC), Liberty Bell I, LLC. The transaction was completed on July 31, 1998.

Procedural History

The IRS issued a notice of deficiency to Times Mirror for 1998, recharacterizing the Bender transaction as taxable rather than a tax-free reorganization. Times Mirror contested this in the U. S. Tax Court, arguing that the transaction qualified under IRC Section 368(a)(1)(A) and (2)(E) as a reverse triangular merger or under Section 368(a)(1)(B). The Tax Court conducted a trial and issued its opinion, ruling in favor of the Commissioner.

Issue(s)

Whether the Bender transaction qualifies as a reorganization under either IRC Section 368(a)(1)(A) and (2)(E) or Section 368(a)(1)(B)?

Whether Section 269 nonetheless dictates that gain be recognized on the Bender

© 2025 SCOTUSreports.com. All rights reserved.

transaction?

Rule(s) of Law

IRC Section 354(a) provides for nonrecognition of gain or loss if stock or securities in a corporation are exchanged solely for stock or securities in another corporation in a reorganization. IRC Section 368(a)(1)(A) and (2)(E) define a reorganization as a statutory merger where the former shareholders of the surviving corporation exchange stock for voting stock of the controlling corporation, with the controlling corporation owning at least 80% of the voting power and total number of shares of the surviving corporation. IRC Section 368(a)(1)(B) defines a reorganization as an acquisition by one corporation of stock of another corporation solely in exchange for voting stock, where the acquiring corporation gains control of the other corporation.

Holding

The Bender transaction does not qualify as a reorganization under IRC Section 368(a)(1)(A) and (2)(E) because the consideration received by Times Mirror included control over $1. 375 billion in cash, which was not solely voting stock. Similarly, it does not qualify under IRC Section 368(a)(1)(B) because Times Mirror received consideration other than voting stock, specifically control over the cash in the LLC. The court did not address the Section 269 issue due to the resolution of the primary issue.

Reasoning

The Tax Court analyzed the transaction’s substance over its form, focusing on the contractual arrangements and the actual economic effects. The court found that Times Mirror’s control over the cash in the LLC, rather than the MB Parent common stock, was the primary consideration for the transfer of Bender to Reed Elsevier. The court noted that the MB Parent common stock lacked control over any assets and had negligible value compared to the $1. 1 billion required for a reverse triangular merger. The court also rejected Times Mirror’s argument that the transaction’s form should be respected, citing cases like Gregory v. Helvering and Western Coast Marketing Corp. v. Commissioner, which emphasize substance over form. The court concluded that the transaction was, in substance, a sale of Bender by Times Mirror to Reed Elsevier, and thus, the gain from the transaction was taxable.

Disposition

The Tax Court ruled in favor of the Commissioner, holding that the Bender transaction did not qualify as a tax-free reorganization under IRC Section 368. The court did not address the alternative argument under Section 269 due to the resolution of the primary issue.

Significance/Impact

© 2025 SCOTUSreports.com. All rights reserved.

The Times Mirror case is significant for its application of the substance over form doctrine in the context of tax-free reorganizations. It emphasizes that the IRS and courts will look beyond the formal structure of a transaction to its economic substance when determining tax consequences. This decision impacts corporate tax planning, particularly in structuring divestitures to achieve tax benefits, by reinforcing the need for transactions to genuinely reflect a continuity of interest and not merely be designed to avoid taxes. Subsequent courts have cited this case in similar contexts, and it remains a key precedent in tax law regarding reorganizations.

© 2025 SCOTUSreports.com. All rights reserved.