Growmark, Inc. & Subsidiaries v. Commissioner of Internal Revenue, 160 T. C. No. 11 (United States Tax Court 2023)

In a ruling affirming the IRS's position, the U. S. Tax Court in Growmark, Inc. & Subsidiaries v. Commissioner of Internal Revenue clarified that fuel blenders can only include in their cost of goods sold (COGS) the actual excise tax they paid, not their gross excise tax liability before applying credits. This decision impacts how fuel blenders calculate their taxable income, reinforcing that excise tax credits under I. R. C. § 6426 reduce the tax liability, not merely offset it for COGS purposes. The ruling ensures consistency in tax treatment between excise tax credits and income tax credits, upholding the legislative intent of the American Jobs Creation Act of 2004.

Parties

Growmark, Inc. & Subsidiaries, the petitioner, is an affiliated group of corporations involved in the production and sale of fuel products. The Commissioner of Internal Revenue, the respondent, represents the Internal Revenue Service (IRS) in this dispute.

Facts

Growmark, Inc. & Subsidiaries (Growmark) is an agricultural cooperative involved in the sale of various fuel products, including gasoline, diesel fuel, renewable fuels, alcohol fuel mixtures, and biodiesel mixtures. During the tax years 2009 and 2010, Growmark claimed excise tax credits under I. R. C. § 6426(b) and (c) for fuel mixtures it produced and sold. These credits were used to reduce its excise tax liability under I. R. C. § 4081. Growmark originally calculated its cost of goods sold (COGS) by including the actual excise tax expense, which was its gross excise tax liability reduced by the credits claimed. However, in its petition to the Tax Court, Growmark argued that it should have been allowed to include its gross excise tax liability, unreduced by the credits, in its COGS calculation. The IRS maintained that Growmark's calculation of COGS should only reflect the excise tax actually paid after applying the credits.

Procedural History

The IRS issued a notice of deficiency to Growmark on July 16, 2014, determining deficiencies for tax years 2009 and 2010 related to issues other than the COGS calculation. Growmark timely filed a petition challenging these adjustments and raised an affirmative allegation regarding the inclusion of gross excise tax liability in its COGS. The Tax Court had previously addressed other issues in the case in Growmark, Inc. & Subs. v. Commissioner, T. C. Memo. 2019-161. The specific issue regarding the COGS calculation was subsequently considered in the present opinion. The standard of review applied was that the taxpayer must meet its burden of proof with respect to its affirmative allegations.

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Issue(s)

Whether a taxpayer that claims a credit against fuel excise tax under I. R. C. § 6426(b) or (c) may also claim as part of its COGS its gross excise tax liability, unreduced by the amount of the credit it received?

Rule(s) of Law

The Internal Revenue Code allows excise tax credits under § 6426(b) and (c) to be applied against the excise tax imposed by § 4081. Section 164(a) provides that federal excise taxes paid or accrued in connection with the acquisition or disposition of property shall be treated as part of the cost of the acquired property or as a reduction in the amount realized on the disposition. Treasury Regulation § 1. 61-3(a) states that in calculating gross income, the taxpayer may subtract the cost of goods sold. Expenses may only be deducted if actually incurred (Affiliated Foods, Inc. v. Commissioner, 128 T. C. 62 (2007); Treas. Reg. § 1. 461-4(g)(6)).

Holding

The Tax Court held that Growmark may only include in its COGS the excise tax it actually incurred or paid, which is reduced by the amount of the tax credits claimed under I. R. C. § 6426(b) and (c). The court further held that legislative history confirms that the actual excise tax expense, rather than the gross excise tax liability, must be used for calculating COGS.

Reasoning

The court’s reasoning focused on the plain meaning of the statutory text and legislative intent. The court emphasized that the phrase “allowed as a credit against the tax imposed” in § 6426(a)(1) indicates a reduction of the tax liability, not an independent payment. This interpretation was supported by the structure of the statute, particularly § 9503(b)(1), which specifies that taxes received under § 4081 are determined without reduction for credits under § 6426, indicating that these credits reduce the liability before being considered for COGS. The court also considered the legislative history of the American Jobs Creation Act of 2004 (AJCA), which aimed to provide an equivalent benefit to replace reduced excise tax rates for fuel mixtures while protecting the Highway Trust Fund. The AJCA’s intent was to ensure that the tax treatment of excise tax credits was consistent with that of income tax credits, and the court found that allowing the gross excise tax liability to be included in COGS would provide an enhanced benefit not intended by Congress. The court was persuaded by prior judicial decisions, including Exxon Mobil Corp. v. United States, 43 F. 4th 424 (5th Cir. 2022), Delek US Holdings, Inc. v. United States, 32 F. 4th 495 (6th Cir. 2022), and Sunoco, Inc. v. United States, 908 F. 3d 710 (Fed. Cir. 2018), which supported the IRS’s interpretation of the statute.

Disposition

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The Tax Court’s decision was entered under Rule 155, affirming the IRS’s position that Growmark’s COGS should only include the excise tax actually paid after applying the credits under I. R. C. § 6426.

Significance/Impact

This case has significant implications for fuel blenders and taxpayers claiming excise tax credits. It clarifies that such credits must first be applied to reduce the excise tax liability before any remaining amount can be considered for refunds or other uses. This ruling ensures consistency in tax treatment between excise tax credits and income tax credits, aligning with the legislative intent of the AJCA. It may influence future interpretations of similar tax provisions and could affect how businesses calculate their COGS and overall taxable income. The decision also supports the integrity of the Highway Trust Fund by ensuring that the full excise tax, as imposed, is credited to the fund, even when partially offset by credits.

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