

T.C. Memo. 2010-197

UNITED STATES TAX COURT

ENERGY CORPORATION & AFFILIATED SUBSIDIARIES, Petitioner y.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 25132-06.

Filed September 9, 2010.

Stephen D. Gardner and William H. O'Brien, for petitioner.

Michael C. Prindible and Melissa D. Arndt, for respondent.

MEMORANDUM OPINION

HALPERN, Judge: Entergy Corp. (petitioner) is the common parent of an affiliated group of corporations (the group) making a consolidated return of income. By notice of deficiency respondent determined deficiencies of \$17,341,254 and \$61,729,798 in the group's Federal income tax for its 1997 and 1998 taxable (calendar) years, respectively. The only issue remaining for

decision is whether respondent properly denied a foreign tax credit for the United Kingdom (U.K.) windfall tax paid by petitioner's indirect U.K. subsidiary.¹ That issue is identical to the issue in PPL Corp. & Subs. v. Commissioner, 135 T.C. ____ (2010), which we also decide today. Moreover, the material facts with respect to that issue are identical to the corresponding facts in PPL.

Unless otherwise stated, all section references are to the Internal Revenue Code in effect for 1997 and 1998.

The parties have stipulated that, in 1997, petitioner's indirect U.K. subsidiary, London Electricity plc, became liable for the U.K. windfall tax, a "one-off" (i.e., one-time) tax of £139,962,622, which it timely paid in two equal installments on December 2, 1997 and 1998. The sole issue is whether the U.K. windfall tax constituted an income or excess profits tax under section 901(b)(1), thereby entitling petitioner to a foreign tax credit under section 901(a) for London Electricity's payment of that tax. In PPL, we answer that question in the affirmative. Respondent makes no argument that leads us to believe we have

¹We decided a separate issue in Entergy Corp. v. Commissioner, T.C. Memo. 2010-166.

erred in PPL. We rely on PPL in holding for petitioner on the windfall tax issue.

An appropriate order and
decision will be issued.