*7 T.C. 354 (1946)*

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A deduction is considered abnormal for excess profits tax purposes if it deviates from the taxpayer's typical business expenses, regardless of whether similar deductions occurred in other base period years.

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**Summary**

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City Auto Stamping Co. sought to exclude certain litigation-related deductions from its 1937 base period income when calculating its excess profits tax for 1941. These deductions stemmed from settlements in a patent dispute and related stockholder suits. The Commissioner argued that because the company had a large judgment payment in 1933, the 1937 deductions were not abnormal. The Tax Court disagreed, holding that the regulations defining abnormality too narrowly were invalid, and the deductions were indeed abnormal for this particular taxpayer and unrelated to changes in their business operations.

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**Facts**

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City Auto Stamping Co., a manufacturing corporation, made payments totaling $48,023.99 in 1937 to settle a suit with Dole Valve Co. regarding a canceled patent license contract. Additionally, it paid $22,560.43 in attorney fees and expenses related to stockholder suits alleging mismanagement stemming from the Dole Valve Co. matter. In 1933, the company paid $299,529.33 related to judgments in suits brought by the Superintendent of Banks alleging unlawful preference in withdrawals of deposits. The company sought to treat the 1937 payments as abnormal deductions when calculating its excess profits tax for 1941.

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**Procedural History**

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The Commissioner of Internal Revenue disallowed the company’s attempt to treat the 1937 deductions as abnormal, leading to a deficiency in excess profits tax for 1941. The company appealed to the Tax Court, arguing that the deductions were abnormal for them and should be excluded from the base period income calculation.

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**Issue(s)**

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1. Whether the Commissioner erred in disallowing the company’s treatment of the 1937 litigation-related deductions as abnormal under Section 711(b)(1)(H) of the Internal Revenue Code.

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2. Whether, if the deductions are abnormal, the company demonstrated that the abnormality was not a consequence of a change in the type, manner of operation, size, or condition of its business, as required by Section 711(b)(1)(K)(ii).

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**Holding**

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1. Yes, because the Tax Court found the regulation defining

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