8 T.C. 146 (1947)

Architects designing buildings and issuing invitations to bid are not "subcontractors" under Section 403(a)(5)(B) of the Renegotiation Act, even if their fees are based on a percentage of construction costs, because they are not acting as procurement agents.

Summary

Wolff & Phillips, a partnership of architects, received payments under subcontracts for designing and supervising construction at shipyards. The Maritime Commission determined their profits were excessive under the Renegotiation Act. The architects petitioned the Tax Court for redetermination. The Tax Court addressed whether the architects were "subcontractors" under Section 403(a)(5)(B) of the Act, which would exclude them from the right to petition the Tax Court. The court held that the architects were not subcontractors as defined in the Act, focusing on the legislative intent to target procurement agents and "war brokers," and thus the Tax Court had jurisdiction.

Facts

Wolff & Phillips were architects operating as a partnership. In 1942, they received payments under four subcontracts related to shipyard construction projects. Subcontracts 8 and 17 required them to issue invitations to bid on the construction of the buildings they designed. Subcontract 16 stipulated their fee was 5% of approved construction contracts. Purchase Order 71742 stated their fee was 5% of estimated costs.

Procedural History

The Maritime Commission determined Wolff & Phillips had excessive profits of $60,000 for 1942 under the Renegotiation Act. Wolff & Phillips petitioned the Tax Court for redetermination. The Commission moved to dismiss the petition, arguing the architects were subcontractors under Section 403(a)(5)(B) and therefore excluded from Tax Court review.

Issue(s)

Whether Wolff & Phillips were "subcontractors" under Section 403(a)(5)(B) of the Renegotiation Act, as amended, thereby precluding the Tax Court from having jurisdiction to redetermine excessive profits.

Holding

No, because the architects' activities did not constitute soliciting or procuring contracts for others, aligning with the legislative intent of the Renegotiation Act to target procurement agents and "war brokers."

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Court’s Reasoning

The court examined the legislative history of Section 403(a)(5)(B), noting it was enacted to address excessive fees paid to manufacturers’ agents and “war brokers” who secured government contracts. The court reasoned that the architects’ fees, even when based on a percentage of construction costs, were not “contingent upon the procurement of a contract… with a Department or of a subcontract” by the architects themselves. The court distinguished the architects’ role from that of procurement agents. Regarding the architects’ duty to issue invitations to bid, the court found that was a usual service performed by architects and did not constitute “soliciting, attempting to procure, or procuring a contract… with a Department or a subcontract.” The court stated: “In issuing invitations to bid, petitioners are not the agents of the subcontractors who bid on the construction of the buildings, nor do they derive their compensation from such subcontractors. In other words, they are not getting business for principals, but are, in effect, giving business.” A broader interpretation would improperly preclude many contractors from Tax Court review, going against Congressional intent.

Practical Implications

This case clarifies the scope of the term “subcontractor” under the Renegotiation Act, specifically Section 403(a)(5)(B). It establishes that professionals providing services related to government contracts are not necessarily considered subcontractors simply because their compensation is tied to contract amounts or they perform administrative tasks like issuing invitations to bid. The key factor is whether they are acting as procurement agents, soliciting or securing contracts for others. This decision informs how similar cases involving professional service providers and government contracts are analyzed. The Tax Court emphasized the importance of looking to legislative intent when construing the statute.

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