9 T.C. 1188 (1947)

The term “artistic composition” in Section 107(b) of the Internal Revenue Code refers to a unitary whole, not a mere collection of individual elements; work predating the specific design’s conception as an entirety cannot be included when calculating the 36-month period for income allocation purposes.

Summary

Sculptor Jean de Marco won a competition to create a sculpture relief for the War Department building. He sought to allocate income from the project under Section 107(b) of the Internal Revenue Code, arguing that the work spanned over 36 months. The Tax Court held that the relevant “artistic composition” was the design submitted for the competition as a whole, not the individual figures or preliminary sketches created before the competition’s announcement. Because De Marco’s work on the specific design did not exceed 36 months, he could not allocate the income. The court emphasized that the design had to be considered a unitary whole, not merely an aggregation of pre-existing elements.

Facts

Jean de Marco, a sculptor, specialized in sculpting for federal buildings. From 1937-1940, he entered several design competitions. In July 1940, the Public Buildings Administration announced a competition for sculptures for the new War Department building. De Marco started making notes and sketches. In September 1940, he received the exact specifications for the design: a sculpture relief 37 feet wide by 11 1/2 feet high. De Marco then created a model with 14 figures centered around “Liberty,” some derived from earlier sketches. He won the competition and contracted with the government on September 2, 1941, for $22,250. He submitted models in stages and received payments in 1941 and 1942. Due to the war, the carving was postponed indefinitely in September 1942, and the contract was terminated on March 1, 1943. De Marco received $11,500 in 1942, more than 80% of his total income from the contract.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in De Marco’s 1942 income tax. De Marco petitioned the Tax Court, arguing that he was entitled to allocate income under Section 107(b) of the Internal Revenue Code. The Tax Court ruled in favor of the Commissioner.

Issue(s)

Whether the petitioner’s work on the “artistic composition” covered a period of 36 calendar months or more, as required by Section 107(b) of the Internal Revenue Code, considering: (1) whether preliminary sketches and models of individual figures made before the specific competition announcement could be included in the

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calculation, and (2) what constituted the

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