11 T.C. 447 (1948)

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For income to qualify for tax benefits under Section 107 of the Internal Revenue Code (pre-1964 amendment) as compensation for services rendered over a long period, those services must be provided to an existing entity capable of receiving them; promotional activities before the entity's formation do not count as 'services rendered'.

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Summary

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Guy C. Myers, a promoter of public utility districts (PUDs), sought to average his income from commissions earned over several years under Section 107 of the Internal Revenue Code. The Tax Court addressed whether Myers' activities before the official creation of the PUDs, as well as services to related entities, qualified as 'services rendered' for purposes of income averaging. The court held that promotional activities prior to the PUDs' existence did not constitute 'services rendered' but allowed income averaging for services to a newly formed corporation created to facilitate the goals of existing entities.

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Facts

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Myers worked to promote the purchase of privately owned electric power facilities by public utility districts (PUDs) in Washington and Nebraska.

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He entered into contracts with various PUDs, acting as a 'banker' or 'fiscal agent' to facilitate the purchase or condemnation of power facilities.

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In Nebraska, Myers initially worked with existing public power generating corporations ("hydros") to purchase distribution facilities. When the hydros could not legally take title to the facilities, a new corporation, Consumers Public Power

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District, was created to complete the purchases and lease the facilities back to the hydros.

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Myers received commissions from the PUDs upon the completion of these purchases.

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Procedural History

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The Commissioner of Internal Revenue determined deficiencies in Myers' federal income tax for 1940 and 1941.

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Myers petitioned the Tax Court, arguing that his income should be taxed under the limitations provided by Section 107 of the Internal Revenue Code.

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The Tax Court addressed the applicability of Section 107 to Myers' income from various PUDs and also considered his residency status for community property purposes and the deductibility of certain expenses.

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Issue(s)

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Whether income received by Myers from contracts with various public utility districts qualifies for tax treatment under Section 107 of the Internal Revenue Code.

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Holding

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No, for income derived from Washington PUDs formed after Myers began promotional activities because the services were not rendered to an existing entity

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for the requisite period.
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Yes, for income derived from Nebraska PUDs that were created to facilitate the goals of existing “hydro” corporations, because the creation of the new entity was a continuation of services to the original entities.

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Court’s Reasoning

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The Tax Court reasoned that Section 107 requires that compensation be received for personal “services rendered.” This implies that services must be provided to an existing entity capable of receiving them.

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Promotional activities before the creation of an entity do not qualify as “services rendered” because there is no one to whom the services can be rendered. The court stated: “Thus it is obvious that the statute, when speaking of rendering services, requires the existence of a person, unincorporated group, or corporation to whom such services may be rendered.”

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However, the court distinguished the Nebraska situation. The creation of Consumers Public Power District was a modification of the original plan to benefit the existing hydros, which were unable to directly purchase the power distribution facilities. The court reasoned,

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