## *Guy C. Myers v. Commissioner of Internal Revenue*, 12 T.C. 455 (1949)

For income to qualify for tax relief as compensation for long-term personal services under Section 107 of the Internal Revenue Code, the services must be rendered to an identifiable person or entity, and promotional activities prior to the existence of such an entity do not qualify as 'services rendered'.

### Summary

Guy C. Myers, a financial agent, received substantial income in 1940 and 1941 for his work in facilitating the acquisition of private power facilities by public utility districts (PUDs) in Washington and Nebraska. He sought to apply Section 107 of the Internal Revenue Code, which allowed for reduced tax rates on income earned over long periods. The Tax Court considered whether Myers' services qualified under Section 107, particularly focusing on the timing and nature of his 'personal services rendered' to the PUDs and related entities. The court held that while services to existing entities like Mason County PUD and Nebraska districts qualified, promotional work before the formal creation of other Washington PUDs did not constitute 'services rendered' to those districts for the purpose of Section 107. Additionally, the court determined Myers was domiciled in New York, not Washington, and disallowed a business expense deduction.

### Facts

Guy C. Myers worked as a financial agent specializing in utility bonds. Beginning in 1934, he engaged in promotional activities in Washington state to facilitate the purchase of private power companies by publicly owned entities. This involved educating the public, advising on PUD creation, and negotiating acquisitions. Myers entered into contracts with various PUDs and Consumers Public Power District in Nebraska, receiving commission-based compensation upon successful acquisitions. His compensation was contingent and paid upon completion of each acquisition. For Nebraska, his initial plan to have hydros purchase distribution facilities failed, leading to the creation of Consumers Public Power District as an alternative entity. Myers received substantial income in 1940 and 1941 as these acquisitions were completed.

### Procedural History

The Commissioner of Internal Revenue determined deficiencies in Myers' federal income tax for 1940 and 1941. Myers petitioned the Tax Court to contest these deficiencies, raising three issues related to Section 107 application, community property income, and a business expense deduction. The Tax Court heard the case and issued its opinion.

### Issue(s)

1. Whether the income received by Myers from various public utility districts in

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1940 and 1941 qualifies for tax treatment under Section 107 of the Internal Revenue Code as compensation for personal services rendered over an extended period.
2. Whether the income from Washington PUDs, specifically Grays Harbor, Pacific County, and Cowlitz PUDS, qualifies as 'personal services rendered' for the entire period of Myers' promotional activities, including before the PUDs' formal existence.
3. Whether the income from Nebraska districts qualifies under Section 107, considering the change in entities from hydros to Consumers Public Power District during the service period.
4. Whether Myers' income constituted community income with his wife under Washington law, or his separate income, based on his domicile.
5. Whether Myers is entitled to deduct a repayment to Paul H. Nitze as a business expense in 1940.

**Holding**

1. Yes, in part. The income from Mason County PUD and the Nebraska districts qualifies for Section 107 tax treatment. No, in part. The income from Grays Harbor, Pacific County, and Cowlitz PUDS does not fully qualify.
2. No. Promotional activities before the formal existence of Grays Harbor, Pacific County, and Cowlitz PUDS do not constitute 'personal services rendered' to those entities for Section 107 purposes.
3. Yes. The income from the Nebraska districts qualifies under Section 107 because the services were consistently aimed at the same objective for the benefit of the hydros, even with the intermediary entity Consumers PUD.
4. No. Myers was domiciled in New York, not Washington, therefore his income is not community property under Washington law.
5. No. The repayment to Nitze is not a deductible business expense in 1940 because the expenses were incurred and deducted in prior years (1938 and 1939).

**Court's Reasoning**

The court reasoned that Section 107 requires 'personal services rendered'. For the Washington PUDs (excluding Mason County), the court emphasized that 'services' necessitates a recipient entity. Promotional activities prior to the legal existence of these PUDs were not 'services rendered' to them. 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." The earliest possible start date for 'services rendered' was the incorporation date of each PUD. For Mason County PUD, and the Nebraska districts, services were rendered to existing entities for periods exceeding the statutory minimum. For Nebraska, the court found continuity of service despite the change from hydros to Consumers PUD, as the underlying objective remained consistent: "The entire and exclusive purpose for the employment of Myers by the hydros was to

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get the hydros from under the domination of the private distributing companies…" Regarding domicile, the court examined numerous factors like voter registration, location of business and personal activities, and tax filings, concluding Myers' domicile remained New York. Citing *Shilkret v. Helvering*, the court emphasized the need for both physical presence and intent to change domicile. Finally, the court disallowed the Nitze deduction because business expenses are deductible in the year incurred, not when related capital is repaid. The court stated, "Business expenses are deductible in the year in which they are incurred. In the case at bar the expenses were incurred by Myers in 1938 and 1939 and they were deducted by him in those years. The expenses were not incurred in 1940 and are therefore not deductible in that year."

**Practical Implications**

*Myers v. Commissioner* provides critical guidance on the 'personal services rendered' requirement of Section 107 (and its successors) for long-term compensation tax relief. It clarifies that preparatory or promotional work, even if essential to eventual income generation, does not qualify as 'services rendered' until a legal entity exists to receive those services. This case highlights the importance of clearly defining the service period and the recipient of services when structuring long-term compensation arrangements, especially in industries involving entity formation or contingent payouts. It underscores that tax benefits for long-term income are strictly construed, and taxpayers must meticulously document the period and nature of their services rendered to specific, existing entities. The domicile ruling serves as a reminder of the multifactor test for establishing domicile and the evidentiary burden on taxpayers claiming a change of domicile for tax advantages. The Nitze expense ruling reinforces the annual accounting principle and the timing of business expense deductions.

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