*7 T.C. 142 (1946)*

The Renegotiation Act of 1942 allows for the redetermination of contract prices and the recovery of excessive profits earned by contractors during wartime, considering factors such as efficiency, risk, and contribution to the war effort.

**Summary**

Deford challenged a unilateral determination that its profits for 1942 were excessive by $400,000, arguing a prior bilateral agreement limited excessive profits to $235,000. The Tax Court addressed the validity of the alleged bilateral agreement, the constitutionality of the Renegotiation Act, whether a specific contract was subject to renegotiation, and the ultimate amount of excessive profits. The court held the alleged agreement was not binding, upheld the Act's constitutionality, excluded one contract from renegotiation, and determined excessive profits to be $255,000 after considering various favorable and unfavorable factors.

**Facts**

- Deford manufactured cartridge cases during 1942 under government contracts subject to the Renegotiation Act.
- The Renegotiation Act aimed to prevent war profiteering by allowing the government to recover excessive profits earned by contractors.
- A proposed bilateral agreement suggesting $235,000 in excessive profits was drafted but never finalized or approved by the Secretary of War.
- Contract 304 included an escalator clause for price adjustments based on labor and material costs. All deliveries and final payment were made prior to April 28, 1942.
- Deford used fully depreciated assets in its manufacturing process.

**Procedural History**

- The War Department unilaterally determined Deford's excessive profits for 1942 to be $400,000.
- Deford appealed this determination to the Tax Court, contesting the amount and raising constitutional challenges to the Renegotiation Act.

**Issue(s)**

1. Whether a proposed but unexecuted bilateral agreement limits the government's ability to unilaterally determine excessive profits.
2. Whether the Renegotiation Act of 1942 is constitutional.
3. Whether contract 304 is subject to renegotiation under the Renegotiation Act.
4. What amount of Deford's profits on renegotiable sales should be deemed excessive.

**Holding**

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1. No, because the proposed agreement was never finalized or approved by the Secretary of War.
2. No, because the Supreme Court has upheld the constitutionality of the Renegotiation Act.
3. No, because final payment under that contract was made prior to April 28, 1942, exempting it from renegotiation under the Act.
4. $255,000, because after considering all favorable and unfavorable factors, that amount represents the excessive profits earned by Deford.

**Court’s Reasoning**

The court reasoned that the proposed bilateral agreement was not binding because it lacked final approval from the Secretary of War. Regarding constitutionality, the court followed established precedent, citing *Lichter v. United States, 334 U. S. 742*, which upheld the Renegotiation Act. The court found that contract 304 was exempt from renegotiation due to final payment being made before the statutory cutoff date, noting, "A later waiver of further payment or agreement that no further payment would be due on the contract can not be regarded as a final payment in order to make this contract subject to renegotiation." In determining the amount of excessive profits, the court considered numerous factors, including efficiency (Army and Navy “E” award), use of fully depreciated assets from World War I, and the overall contribution to the war effort. The court allocated costs and expenses based on sales and applied the appropriate exclusions and deductions under the Internal Revenue Code. It ultimately determined that $255,000 constituted excessive profits.

**Practical Implications**

This case demonstrates how courts evaluate claims of excessive profits under the Renegotiation Act, emphasizing a holistic approach that considers both quantitative financial data and qualitative factors related to a contractor’s performance and contribution. It clarifies that preliminary agreements are not binding until fully executed by authorized parties. It also reinforces that the timing of payments is crucial in determining whether a contract is subject to renegotiation. The case highlights the importance of documenting and presenting evidence of favorable factors, such as efficiency and innovation, to mitigate the determination of excessive profits. Later cases have cited this one regarding what factors are relevant in evaluating whether profits are excessive.

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