12 T.C. 375 (1949)

For purposes of tax apportionment under Section 107 of the Internal Revenue Code, compensation received by a trustee cannot be divided based on intermediate accountings if the trustee's services are of a continuous and homogenous nature; the total compensation from the beginning to the completion of such services must be considered.

Summary

The petitioner, a trustee, sought to apportion income taxes on commissions received in 1944 under Section 107 of the Internal Revenue Code, arguing that these commissions represented over 80% of the compensation for services rendered up to his first intermediate accounting. The Tax Court rejected this argument, holding that the trustee's services were continuous and could not be artificially divided by intermediate accountings. The court reasoned that the 80% requirement must be based on the total compensation for the trustee's services from beginning to completion, not just a segment thereof. The ruling clarifies the application of Section 107 to ongoing services and emphasizes the importance of considering the entire period of service when determining tax apportionment.

Facts

Ralph E. Lum served as a co-trustee (and later sole trustee) of a testamentary trust established in 1939. In 1944, the Court of Chancery of New Jersey approved the trustees' first intermediate account, covering 1939-1944, and authorized payment of $3,500 in commissions, of which Lum received $2,500. Lum sought to treat the $2,500 as eligible for tax apportionment under Section 107 of the Internal Revenue Code. From 1939-1947, Lum received $4,343.32 in total commissions ($2,500 on corpus and $1,843.32 on income), with $2,712.52 received in 1944 alone. After 1944, Lum continued to serve as trustee.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Lum's 1944 income tax, disallowing the apportionment of the $2,500 commission under Section 107. Lum petitioned the Tax Court for review of the Commissioner's determination.

Issue(s)

Whether commissions received by a trustee in a single tax year can be apportioned under Section 107 of the Internal Revenue Code, based solely on the period covered by an intermediate accounting, when the trustee's services are continuous and extend beyond that period.

Holding

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No, because Section 107 requires that at least 80% of the total compensation for personal services

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