16 T.C. 161 (1951)

Under the Renegotiation Act, a sales representative whose services include soliciting or procuring government contracts for their principals is considered a subcontractor, making their compensation subject to renegotiation to recover excessive profits.

Summary

The petitioner, a sales representative, contested the Commissioner's determination that he was a subcontractor under the Renegotiation Act of 1942, arguing his compensation wasn't contingent on his procurement of contracts. The Tax Court held that because the petitioner's services included soliciting and procuring Navy contracts for his principals, he was indeed a subcontractor, regardless of whether his commission was directly tied to specific contracts he secured. Thus, commissions from Navy Supply Department sales were subject to renegotiation, excluding those from the Ships' Service Department.

Facts

The petitioner worked as a sales representative for multiple principals. His responsibilities included locating Navy business and assisting his principals in securing contracts. He leveraged his experience and contacts within the Navy to stimulate demand for his principals' products and secure promises for orders under existing open purchase contracts. The petitioner also supervised the packing and shipping of goods, arranged delivery schedules, and fostered good relations between his principals and the Navy Supply Department. He received commissions on all gross sales to the Navy within his territory, regardless of whether he personally made the sales.

Procedural History

The War Contracts Price Adjustment Board determined that the petitioner received excessive profits in 1943 from commissions on sales to the Navy Supply Department. The Commissioner upheld this determination. The petitioner then appealed to the Tax Court, contesting his classification as a subcontractor subject to the Renegotiation Act.

Issue(s)

1. Whether the petitioner was a 'subcontractor' within the meaning of Section 403(a)(5)(B) of the Renegotiation Act of 1942 because his services included soliciting or procuring contracts with a department of the government.
2. Whether all of the petitioner's compensation based on gross sales to the Navy Supply Department by his principals is renegotiable under the Renegotiation Act.

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Holding

1. Yes, because the petitioner's services included soliciting and procuring contracts with the Navy, which falls under the definition of 'subcontractor' in Section 403(a)(5)(B)(ii) of the Renegotiation Act.
2. No, because the business solicited from the Ships' Service Department of the Navy is not subject to renegotiation, as it does not involve funds appropriated by Congress.

Court's Reasoning

The court reasoned that the Renegotiation Act aimed to recover excessive profits from manufacturers' agents involved in government contracts. Section 403(a)(5)(B)(ii) applies to contracts where any part of the service involves soliciting or procuring government contracts. The court distinguished this case from *Leon Fine, 9 T.C. 600*, where the agent's primary role was service, not sales. Here, the petitioner's primary role was to locate and procure Navy business for his principals. The court emphasized that, according to the Act, it applied to "Any contract * * * under which any part of the services performed or to be performed consists of the soliciting, attempting to procure, or procuring a contract or contracts with a Department or a subcontract or subcontracts." The court found the petitioner's compensation based on sales to the Navy Supply Department was subject to renegotiation, while business from the Ships' Service Department was excluded because it didn't involve congressionally appropriated funds, citing *W. Tip Davis Co., 12 T.C. 335*.

Practical Implications

This case clarifies the scope of the Renegotiation Act regarding manufacturers' agents or sales representatives. It establishes that if an agent's duties include soliciting or procuring government contracts, their compensation is subject to renegotiation to prevent excessive profits, regardless of whether the compensation is directly contingent on the agent's personal procurement efforts. This decision highlights the importance of carefully scrutinizing the roles and responsibilities outlined in contracts between manufacturers and their agents, particularly when government contracts are involved. It also reinforces the principle that only profits derived from contracts using congressionally appropriated funds are subject to renegotiation under the Act. This decision would impact how legal professionals advise clients involved in government contracting and compensation structures.

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