13 T.C. 323 (1949)

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A taxpayer cannot deduct a loss under Section 23(e)(2) of the Internal Revenue Code resulting from a gratuitous indemnity agreement, especially when the prospect of profit from the underlying transaction is remote and indirect.

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Summary

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Charles Wigton, president and majority shareholder of Wigton-Abbott Corporation, guaranteed the corporation against loss from a stock purchase. When the stock was sold at a loss, Wigton reimbursed the corporation and sought to deduct the payment as a loss on his personal income tax return. The Tax Court denied the deduction, holding that the indemnity agreement was a gratuitous gesture, not entered into for profit, and the potential benefit to Wigton (increased dividends) was too indirect to justify a deduction under Section 23(e)(2) of the Internal Revenue Code. The court emphasized the lack of a direct connection between Wigton's guarantee and any reasonable expectation of personal profit.

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Facts

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Charles Wigton, as president and majority stockholder of Wigton-Abbott Corporation, directed the company treasurer to purchase 200 shares of Columbia Gas & Electric Co. stock. Prior to the directors' meeting, Wigton provided a written guarantee to indemnify the corporation against any loss from the stock purchase. Wigton's authority was such that the purchase likely would have been approved regardless. The stock was purchased in 1931 and held until 1941, when it was sold at a loss of $6,456.02. In 1943, Wigton paid the corporation the amount of the loss under his indemnity agreement.

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Procedural History

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Wigton deducted the $6,456.02 payment on his 1943 income tax return. The Commissioner of Internal Revenue disallowed the deduction, leading Wigton to petition the Tax Court for review.

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Issue(s)

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Whether Wigton is entitled to a deduction under Section 23(e) of the Internal Revenue Code for the $6,456.02 paid to Wigton-Abbott Corporation pursuant to his written promise to indemnify the corporation for any loss resulting from its purchase of Columbia Gas & Electric Co. stock.

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Holding

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No, because the indemnity agreement was a gratuitous gesture not made to procure profit, and the possibility of Wigton obtaining profit through increased dividends in Wigton-Abbott Corporation was too remote to support a loss deduction under Section 23(e)(2) of the Internal Revenue Code.

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Court’s Reasoning

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The court reasoned that while Wigton was legally obligated to indemnify the corporation (consideration being the corporation’s purchase of the stock), the guarantee itself was a “gratuitous gesture.” Wigton’s authority within the corporation was such that the stock purchase would have occurred regardless of the guarantee. The court distinguished this situation from cases where an executive’s activity is considered a trade or business. The court emphasized that Wigton’s motivation was to avoid criticism from minority shareholders rather than to generate profit. Even if Wigton hoped the corporation would profit, the connection between the guarantee and his potential profit (increased dividends) was too indirect. Citing *Goldsborough v. Burnet*, the court stated that the benefit must be of a

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