16 T.C. 988 (1951)

Subscription fees received by a non-profit organization, earmarked for a specific project and subject to refund if unexpended, do not constitute taxable income.

Summary

Broadcast Measurement Bureau (BMB), a non-profit organization, received subscription fees from broadcasters for a nationwide radio audience study. The subscription contracts stipulated that any unexpended fees would be returned to subscribers. The Commissioner of Internal Revenue argued that the excess of subscription fees over expenses constituted taxable income. The Tax Court held that because the subscription fees were received with the restriction that they be used solely for the study and any excess be refunded, they were akin to a trust fund and not taxable income to BMB. The court also found BMB was not liable for a penalty for late filing of its excess profits tax return.

Facts

Broadcast Measurement Bureau (BMB) was formed as a non-profit corporation by the National Association of Broadcasters (NAB), the Association of National Advertisers, Inc. (ANA), and the American Association of Advertising Agencies (AAAA) to create a uniform standard for radio audience measurement.

BMB conducted Study No. 1, a nationwide survey, funded by subscription fees from radio stations and networks.

Subscription contracts stipulated that BMB would use the fees to cover the study’s costs and refund any surplus to subscribers, either as direct refunds or credits toward future studies.

For the fiscal year ending June 30, 1946, BMB’s receipts exceeded expenses, resulting in an unexpended balance.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in BMB’s income, declared value excess-profits, and excess profits taxes for the fiscal year ended June 30, 1946, along with a penalty for late filing.

BMB petitioned the Tax Court for a redetermination of the deficiencies.

Issue(s)

1. Whether subscription fees received by BMB in the fiscal year ending June 30, 1946, constituted taxable income.

2. Whether BMB was liable for a penalty for failing to timely file its excess profits tax return for the same period.

Holding

1. No, because the subscription fees were received under a contractual obligation to use them solely for Study No. 1 and to refund any unexpended balance, thereby creating a fund in the nature of a trust.

2. No, because BMB had no gross income and thus no excess profits income, so no return was required.

Court's Reasoning

The court emphasized that the intent of the parties, as evidenced by the subscription contracts, demonstrated that BMB received the fees in trust for the subscribers, with a clear obligation to return any unexpended amounts.

The court found that although there were no explicit words of trust, the circumstances of the agreement made it clear that BMB was to act as a fiduciary, administering funds solely for the specified purpose of conducting Study No. 1.

The court distinguished this case from cases where the recipient had unrestricted use of the funds or an opportunity for profit, noting that BMB was a non-profit entity and its contracts precluded it from profiting from the subscription fees.

The court also noted that BMB consistently treated the excess funds as a liability, accruing it on its books and ultimately resolving to refund the excess to subscribers.

Concurring opinions argued the result was correct but disagreed with the trust fund analysis, suggesting a simple contract relationship existed where the obligation to repay unspent funds negated income.

Practical Implications

This case clarifies that funds received with specific restrictions on their use and an obligation to return any unexpended portion are not considered taxable income to the recipient.

The ruling is relevant for non-profit organizations and other entities that receive funds earmarked for particular projects, especially when contracts or agreements stipulate a refund of unused funds.

Later cases have cited *Broadcast Measurement Bureau* for the principle that the key factor in determining whether funds are income is whether the recipient has a "claim of right" to the funds and the ability to use them without restriction.

This case highlights the importance of clearly defining the terms of funding agreements to avoid unintended tax consequences, ensuring that restrictions on the use of funds are explicitly stated.

