17 T.C. 312 (1951)

In tax disputes, the taxpayer bears the burden of proving that the Commissioner of Internal Revenue's determination of a tax deficiency is incorrect, but this burden can be met by presenting credible evidence that contradicts the Commissioner's findings.

Summary

Kentucky Distributing Company disputed the Commissioner's assessment of unreported income derived from sales exceeding OPA ceiling prices. The Tax Court found that while the Commissioner presented some evidence evoking suspicion of overcharges, it was ultimately too vague and uncertain to overcome the taxpayer's evidence that no over-ceiling prices were charged or received. The court also addressed deductions for travel expenses and the reasonableness of salary compensation. The court allowed a portion of travel expenses based on the *Cohan* rule, but upheld the Commissioner's determination regarding excessive salary compensation due to lack of sufficient evidence.

Facts

Kentucky Distributing Company, a wholesale liquor distributor, faced issues with its Kentucky liquor license. After its initial license expired and renewal was refused, the company operated under temporary permits while attempting to regain its license. The Commissioner of Internal Revenue alleged the company received unreported income from sales above OPA ceiling prices during this period. The company president made numerous trips related to the business, including attempts to increase liquor allocations and renew the company's license. The company paid its president a salary that the Commissioner deemed excessive.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in the company's income, declared value excess profits, and excess profits taxes. The Kentucky Distributing Company challenged the Commissioner's adjustments in Tax Court, specifically contesting the alleged unreported income, disallowed travel expenses, and the disallowance of a portion of the president's salary. The Tax Court reviewed the evidence and made its determination on each issue.

Issue(s)

1. Whether the Commissioner erred in increasing the petitioner's reported income for the taxable year ended June 30, 1944, based on allegations of sales prices exceeding OPA ceilings.
2. Whether the Commissioner erred in disallowing the travel expenses claimed by the petitioner for the fiscal year ended June 30, 1944.
3. Whether the Commissioner erred in disallowing as excessive a portion of the

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salary paid to the petitioner's president and controlling stockholder for the fiscal year ended June 30, 1945.

Holding

1. No, because the Commissioner's evidence was too vague and uncertain to prove the company charged or received payments exceeding OPA ceiling prices.
2. No, in part, because while some travel expenses were deductible as ordinary and necessary business expenses, the taxpayer's lack of itemized records necessitated an approximation under the *Cohan* rule.
3. No, because the taxpayer failed to provide sufficient evidence to overcome the Commissioner's determination that a portion of the president's salary was unreasonable.

Court's Reasoning

Regarding the unreported income, the court found the Commissioner's evidence

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