***The Anders Corporation v. Commissioner, 12 T.C. 445 (1949)***

A sum received for an option on property is not taxable income when received if it may be applied to the purchase price and is less than the property's adjusted basis, but a penalty for failing to file a timely return is not excused by a later net operating loss carryback.

**Summary**

The Anders Corporation received $120,000 for an option to purchase property, which could be applied to the purchase price. The Commissioner argued this was prepaid rent, taxable upon receipt. The Tax Court held that because the sum was for an option, could be applied to the purchase and was less than the property's basis, it was not taxable income in the year received. However, the Court upheld a penalty for late filing of a prior year's return, despite a subsequent net operating loss carryback that eliminated the tax due for that year.

**Facts**

The Anders Corporation (petitioner) granted an option to purchase property, receiving $120,000 in 1947. The agreement stipulated that this amount would be applied to the purchase price if the option was exercised. The $120,000 was less than the adjusted basis of the property. The petitioner also failed to file its 1945 income tax return on time, for which the Commissioner assessed a penalty.

**Procedural History**

The Commissioner determined that the $120,000 was taxable income in 1947 and assessed a penalty for the late filing of the 1945 return. The Anders Corporation petitioned the Tax Court for review. The Tax Court addressed both the taxability of the option payment and the validity of the penalty.

**Issue(s)**

1. Whether the $120,000 received by the petitioner in 1947 constituted taxable income upon receipt.
2. Whether a net operating loss carryback from 1947 can excuse a penalty for the failure to file a timely return in 1945.

**Holding**

1. No, because the sum received for the option could be applied to the purchase price of the property and was less than the adjusted basis of the property.
2. No, because the obligation to file a timely return is mandatory, and a later net operating loss carryback does not excuse the earlier delinquency.

**Court's Reasoning**

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The Tax Court relied on the testimony of witnesses, including signatories of the lease and the drafting attorney, who all stated the $120,000 was intended as payment for an option. The Court found this testimony credible and corroborated by the terms of the instrument. The Court considered factors that could support the Commissioner's argument, such as the lease term's length and the relationship between rent and the option price, but deemed them insufficient to overcome the petitioner's evidence.

Regarding the penalty, the Court emphasized that the obligation to file a timely return is mandatory. Citing *Manning v. Seeley Tube & Box Co. of New Jersey, 338 U.S. 561*, the court reasoned that a net operating loss carryback could eliminate a deficiency, but not the interest accrued on that deficiency. The Court quoted the Senate Finance Committee report, stating that a taxpayer must file their return and pay taxes without regard to potential carrybacks and then file a claim for refund later.

**Practical Implications**

This case clarifies the tax treatment of option payments, distinguishing them from prepaid rent. When structuring option agreements, it is crucial to ensure the payments can be applied to the purchase price and do not exceed the property's adjusted basis to avoid immediate taxation. The case also reinforces the importance of timely filing tax returns. A net operating loss carryback, while beneficial, will not retroactively excuse penalties for late filing. Legal practitioners should advise clients to prioritize timely filing, irrespective of anticipated future losses, and to clearly document the intent and purpose of option payments to avoid disputes with the IRS.

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