17 T.C. 1479 (1952)

When an executor receives compensation for both ordinary and extraordinary services to an estate, the compensation is not divisible for the purpose of applying Section 107 of the Internal Revenue Code.

Summary

Moe Lesser, an attorney and co-executor of an estate, sought to allocate fees received for 'extraordinary services' over the 44-month period of his executorship under Section 107 of the Internal Revenue Code. The Tax Court held that the commissions received as co-executor were not divisible between ordinary and extraordinary services. Because the amount received in the taxable year (1944) was not more than 80% of the total compensation, Lesser was not entitled to the tax benefits of Section 107. This case clarifies that all compensation related to executorship must be considered together for tax purposes when determining eligibility for income averaging.

Facts

Carl Schilling's will named Moe Lesser and John Eagle as co-executors. Both were attorneys. The California Probate Code provided fees for ordinary services (Sections 900 and 901) and additional fees for extraordinary services (Section 902). The co-executors petitioned the court for authorization to have Lesser act as tax counsel due to his specialization. The court authorized them to employ tax counsel, including one or both of themselves. Lesser performed most tax-related work, and Eagle handled other extraordinary services. Upon final accounting, the court awarded $35,000 for extraordinary services, of which Lesser received $14,000 net after paying assistants.

Procedural History

Lesser and his wife filed individual income tax returns for 1944, allocating the $14,000 over 44 months. The Commissioner of Internal Revenue determined deficiencies, arguing that Section 107 did not apply. The Tax Court consolidated the proceedings and ruled in favor of the Commissioner, denying Lesser the ability to allocate the income.

Issue(s)

Whether an executor can treat compensation received for 'extraordinary services' to an estate separately from compensation for ordinary services for the purposes of applying the income-averaging provisions of Section 107(a) of the Internal Revenue Code.

Holding

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No, because the services performed by the co-executor were not divisible into separate and distinct tasks; therefore, the total compensation must be considered together, and the 80% threshold of Section 107 was not met.

Court's Reasoning

The court reasoned that the extraordinary services were an extension of the executorship, not a separate task. The court cited *Ralph E. Lum, 12 T.C. 375 (1949)*, stating, "unless the services themselves are divisible, the compensation received therefor, regardless of source, must be lumped together." Even though Lesser specialized in tax matters, his work was still part of his overall duty as co-executor. The court emphasized that California courts consider regular commissions when setting extraordinary commissions, indicating a single service under a single appointment. The court further noted, citing *In re Scherer's Estate, 136 P.2d 103 (1943)*, that an attorney-executor cannot receive additional compensation for legal services rendered as his own attorney.

Practical Implications

This case establishes a clear precedent against dividing executor compensation into ordinary and extraordinary categories for tax purposes. It emphasizes that all compensation stemming from a single executorship is considered a single source of income. Legal practitioners should advise clients that if they serve as executors, all compensation related to that role will be treated as a single unit for tax purposes. It limits the availability of income averaging under Section 107 when the bulk of the compensation is received in a single year, unless that single year's compensation constitutes at least 80% of the total compensation for all services. Later cases would likely distinguish based on whether the individual performs completely separate services outside of their role as executor or administrator. This ruling impacts tax planning for attorneys who also act as executors or administrators of estates.

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