*17 T.C. 1484 (1952)*

A taxpayer seeking excess profits tax relief under Section 722 of the Internal Revenue Code must provide sufficient factual evidence to establish a fair and just amount representing normal earnings to be used as a constructive average base period net income; unsubstantiated opinions are insufficient.

**Summary**

Powell-Hackney Grocery Co. sought relief from excess profits taxes for the years 1941-1946 under Section 722(b)(4) of the Internal Revenue Code, arguing that a change in the character of its business during the base period made its average base period net income an inadequate standard of normal earnings. The company had acquired a new wholesale grocery store outside its traditional coal-area market. The Tax Court denied the relief, holding that the company failed to adequately demonstrate that its tax liability resulted in an excessive and discriminatory tax, or to establish a fair and just constructive average base period net income.

**Facts**

Powell-Hackney Grocery Co. operated wholesale grocery stores primarily in the coal region of Kentucky. In 1940, the company acquired the Rucker Wholesale Grocery Co. in Lawrenceburg, Kentucky, outside the coal area. The company aimed to diversify its business and believed it could significantly increase the sales volume of the Lawrenceburg store. The Lawrenceburg store was destroyed by fire in 1943. Powell-Hackney paid excess profits taxes for the fiscal years 1941-1946 and sought relief under Section 722(b)(4) of the Internal Revenue Code, claiming a constructive average base period net income of $37,674.61.

**Procedural History**

Powell-Hackney filed applications for relief and claims for refund for the fiscal years ended June 30, 1941, through 1946. The Commissioner of Internal Revenue denied all claims for relief. The Tax Court consolidated the proceedings involving claims for refund.

**Issue(s)**

Whether Powell-Hackney provided sufficient evidence to establish that its average base period net income was an inadequate standard of normal earnings, entitling it to excess profits tax relief under Section 722(b)(4) of the Internal Revenue Code.

**Holding**

No, because Powell-Hackney failed to provide sufficient factual evidence to establish a fair and just amount representing normal earnings to be used as a constructive average base period net income.

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## Court’s Reasoning

The court acknowledged that the acquisition of a new unit during the base period constituted a change in the character of the business, making Powell-Hackney eligible for relief under Section 722(b)(4). However, eligibility alone was insufficient. The court emphasized that Powell-Hackney needed to demonstrate what would be a fair and just amount representing normal earnings to be used as a constructive base period net income. The company’s claim of $41,804.89 as its reconstructed average base period net income was based on the unsubstantiated opinions of its officers that the Lawrenceburg store could achieve $30,000 in monthly gross sales. The court noted the lack of factual evidence supporting this assumption, stating, “the establishment of an ultimate fact requires something more than a mere statement of the conclusion of the fact sought to be proved.” The court also pointed out inconsistencies in Powell-Hackney’s calculation of base period net income for its other stores. Finally, the Court cited Section 722(a) that “in determining what would be a fair and just amount representing normal earnings to be used as a constructive average base period net income, no regard shall be had to events or conditions existing after December 31, 1939.”

## Practical Implications

This case underscores the importance of providing concrete, factual evidence when seeking tax relief based on constructive income calculations. Taxpayers must do more than offer opinions or projections; they need to support their claims with data, market analysis, and other objective information. This case serves as a caution against relying solely on the subjective beliefs of company officers without providing a solid foundation for those beliefs. It highlights the rigorous standard of proof required to successfully claim relief under Section 722 and similar provisions, emphasizing the need for thorough documentation and expert analysis in such cases. Later cases considering similar claims must be grounded in verified economic data to support a claim of constructive income.

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