Southwestern Broadcasting Company v. Commissioner, 20 T.C. 40 (1953)

A radio station's installation of a new, technologically advanced antenna, resulting in a significant increase in broadcasting coverage and advertising revenue, constitutes a change in the character of the business under Section 722(b)(4) of the Internal Revenue Code, entitling the station to relief from excess profits tax.

Summary

Southwestern Broadcasting Company sought relief from excess profits tax under Section 722(b)(4) of the Internal Revenue Code, arguing that the installation of a new antenna during the base period (1936-1939) significantly changed the character of its business. The Tax Court agreed, finding that the new antenna substantially increased the station's broadcasting coverage and advertising revenue, and that the station did not reach its normal earning level by the end of the base period due to a time lag in realizing the full benefits of the improved coverage. The court determined that the company was entitled to relief and outlined the method for calculating a constructive average base period net income.

Facts

Southwestern Broadcasting Company (WOAI), a radio station, installed a new antenna in 1937. Prior to the new antenna, the effective radiating power was only 40% of the input power. Tests on the new antenna indicated an efficiency of approximately 100%, equal to an increase in effective radiating power of 150%. The increase in effective power significantly increased both nighttime and daytime coverage, doubling the population served. WOAI requested a coverage survey from NBC, and based on that survey it was granted an increase in its unit rate per hour, effective October 1939. However, due to industry practice, existing advertisers continued at the old rates for one year.

Procedural History

Southwestern Broadcasting Company petitioned the Tax Court for relief from excess profits tax, arguing that its average base period net income was an inadequate standard of normal earnings due to a change in the character of its business. The Commissioner of Internal Revenue opposed the petition, arguing that the antenna installation was a routine technical development and did not directly result in an increase in advertising income. The Tax Court ruled in favor of Southwestern Broadcasting Company.

Issue(s)

Whether the installation of a new antenna by a radio broadcasting station during the base period constitutes a change in the character of the business under Section 722(b)(4) of the Internal Revenue Code, thereby entitling the station to relief from excess profits tax.

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Holding

Yes, because the installation of the new antenna significantly increased the station's broadcasting coverage and advertising revenue, which constituted a substantial and permanent change in the character of the business, and the station did not reach its normal earning level by the end of the base period.

Court's Reasoning

The court reasoned that the erection of the new antenna was a substantial change and of a permanent or lasting nature. The Court emphasized that the company

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