18 T.C. 883 (1952)

A taxpayer is deemed to have constructively received income when it is credited to their account, set apart for them, or otherwise made available so they can draw upon it at any time without substantial limitation or restriction.

Summary

James and Francis Cooney, the sole stockholders and officers of Cooney Brothers, Inc., were authorized to receive an incentive bonus based on a percentage of the corporation's profits. In December 1947, the corporation authorized a $10,000 partial payment of this bonus to each brother, anticipating substantial profits. The IRS argued that the Cooneys constructively received this $10,000 in 1947, even though it wasn't formally paid until 1948. The Tax Court agreed with the IRS, holding that the brothers constructively received the income in 1947 because the funds were available, and they had the authority to access them.

Facts

James and Francis Cooney equally owned Cooney Brothers, Inc. James was president, and Francis was vice president. On January 2, 1947, the corporation resolved to pay each brother a salary of $10,000 plus a bonus of 10% of the corporation's net profit before taxes. On December 2, 1947, the directors authorized a $10,000 payment to each brother "on account of" their incentive bonus, anticipating profits would exceed $125,000. The exact bonus amount was determined in February 1948 and paid to the brothers in installments throughout 1948. The corporation had ample cash available in its bank accounts during November and December 1947. The Cooneys were the only individuals who could sign checks on behalf of the corporation.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in the Cooneys' income tax for 1947, arguing that they constructively received $10,000 each of their bonuses in 1947. The Cooneys petitioned the Tax Court for a redetermination of the deficiencies. The Tax Court consolidated the cases and ruled in favor of the Commissioner, finding that the Cooneys constructively received the income in 1947.

Issue(s)

Whether the petitioners constructively received $10,000 each of their 1947 incentive bonus in 1947, even though the payments were not formally made until 1948.

Holding

Yes, because the $10,000 payments to petitioners were duly authorized by the corporation's board of directors, were expressly made payable within the taxable

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year, the funds were available, and they were subject to petitioners' use and enjoyment within the taxable year.

Court's Reasoning

The court reasoned that the December 2, 1947 resolution gave the Cooneys the unqualified right to receive $10,000 each in 1947. The court distinguished this case from situations where constructive receipt depended on book entries or where the taxpayer's right to receive the funds was restricted. Here, the Cooneys controlled the corporation, ample funds were available, and the resolution authorized the payments in 1947. The court noted the absence of any contingency attached to the payment. The court emphasized that the determining factors were that the payments were authorized, payable within the taxable year, and subject to the petitioners' use within that year. Quoting precedent, the court stated that amounts due from a corporation are included in the income of a cash-basis taxpayer

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