***19 T.C. 600 (1952)***

Income derived from the manufacture and sale of a patented item is not eligible for income averaging under Section 107(b) of the Internal Revenue Code unless the taxpayer can demonstrate that a specific portion of the income is directly attributable to the patent itself, rather than simply to manufacturing and sales operations.

**Summary**

Alfred Barber, an inventor, sought to use Section 107(b) of the Internal Revenue Code to spread income he received in 1945 from the manufacture and sale of voltmeters over a 36-month period, arguing that the income was derived from his patented invention. The Tax Court denied his claim, holding that the income was primarily attributable to his manufacturing and selling activities in 1945, not to the underlying patent. Barber failed to prove that any portion of the voltmeter sales price represented a royalty or was otherwise specifically linked to the value of his patent. The court emphasized that Section 107(b) is intended to provide relief when income is generated by work performed over an extended period, not by ongoing business operations.

**Facts**

Alfred Barber invented a voltmeter between 1930 and 1935 and obtained a patent in 1936. He assigned the patent to Premier Crystal Laboratories, Inc., which never manufactured or sold the voltmeters. In 1943, Premier Crystal Laboratories reassigned the patent rights back to Barber. Barber then began manufacturing and selling voltmeters himself. In 1945, Barber's gross income from voltmeter sales was $40,304.86, representing over 80% of his gross income from voltmeter sales for 1945 and the preceding and following years. Barber expanded his facilities and staff to support voltmeter production. He calculated his income tax liability for 1945 by treating the income from voltmeter sales under Section 107 of the Internal Revenue Code, which allows income from inventions developed over 36 months to be spread out over that period for tax purposes.

**Procedural History**

The Commissioner of Internal Revenue determined a deficiency in petitioners' income tax for 1945. The Commissioner argued that Section 107 was inapplicable to Barber's income from the manufacture and sale of voltmeters. Barber petitioned the Tax Court for a redetermination of the deficiency.

**Issue(s)**

Whether the income Alfred Barber received from the manufacture and sale of voltmeters in 1945 qualifies for income averaging under Section 107(b) of the Internal Revenue Code, given that the income was derived from manufacturing and

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selling activities rather than directly from the patent itself.

**Holding**

No, because Barber failed to demonstrate that any specific portion of the income he received was attributable to the patent itself, as opposed to the manufacturing and selling operations he conducted in 1945.

**Court's Reasoning**

The court reasoned that Section 107(b) is intended to provide tax relief when a taxpayer receives a large amount of income in one year that is attributable to work performed over a number of years. While the invention of the voltmeter took place over several years, the income at issue was generated by manufacturing and selling activities in 1945. The court distinguished between royalty income derived directly from a patent (which would be eligible for Section 107(b) treatment) and income derived from the business of manufacturing and selling a patented product. The court stated, "Of course, if it could be shown that some portion of the 1945 income from the manufacture and sale of the voltmeters was allocable to the patent, then there would be a basis for the application of section 107, but only to that extent." Because Barber did not prove that any portion of his income was attributable to the patent, the court held that Section 107(b) was inapplicable. The court noted that Barber bore the burden of proving that some portion of his income was allocable to the patent and he failed to meet this burden.

**Practical Implications**

This case clarifies that Section 107(b) of the Internal Revenue Code is not a general tax break for inventors who manufacture and sell their inventions. To qualify for income averaging, inventors must demonstrate a direct link between the patent and the income received. This case highlights the importance of proper accounting practices to allocate income between manufacturing/sales and patent royalties. Attorneys advising inventors should counsel them to maintain records that clearly distinguish between income derived from the patent itself and income derived from manufacturing and selling activities. Later cases have cited *Barber* to emphasize the requirement of demonstrating a clear nexus between the income and the qualifying activity (invention, artistic creation, etc.) for income averaging purposes.

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