20 T.C. 461 (1953)

A subcontract is not exempt from renegotiation under the Renegotiation Act if the prime contract under which it was let is not exempt.

Summary

Lichter v. United States addresses whether subcontracts are exempt from renegotiation under the Renegotiation Act of 1942 when the prime contracts are not exempt. The Tax Court held that the subcontracts were not exempt because the exemption for subcontracts only applies if the prime contracts are also exempt. The court based its reasoning on the language and legislative history of the Renegotiation Act, emphasizing that Congress intended to exempt only subcontracts let under exempt prime or intermediate contracts. This decision clarifies the scope of the subcontract exemption and its dependence on the exemption status of the underlying prime contract.

Facts

Jacob and Jennie Lichter, partners in Southern Fireproofing Company, were subcontractors on several construction projects for the War Department in 1942. These projects included work at Camp McCoy, Morganfield Triangular Division Camp, a warehouse in Jeffersonville, and other military installations. The prime contracts for these projects were with companies such as Ring Construction Co., Pearson Construction Co., and Bass-Steenberg-Fleisher. The Secretary of War determined that Southern Fireproofing Company had excessive profits of $70,000 in 1942, later adjusted to $76,800. The prime contracts under which Lichter operated were renegotiated under the Renegotiation Act of 1942.

Procedural History

The Secretary of War issued a unilateral order determining that the petitioners had realized excessive profits. The petitioners challenged the constitutionality of the Renegotiation Act in District Court, but the judgment was affirmed by the Court of Appeals for the Sixth Circuit and the Supreme Court. The current suit was brought under the authority of Private Law No. 1057, 81st Congress.

Issue(s)

Whether the petitioners' subcontracts were exempt from renegotiation under Section 403(i)(1)(F) of the Renegotiation Act of 1943 because they were subcontracts under prime contracts with a department of the government that were awarded as a result of competitive bidding.

Holding

No, because Section 403(i)(1)(F) only exempts subcontracts if the underlying prime

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contracts are also exempt, and the prime contracts in this case were not exempt for the year 1942. The prime contracts could only be exempt after June 30, 1943, as provided by Section 701(d) of the Revenue Act of 1943.

Court's Reasoning

The court reasoned that a literal reading of Section 403(i)(1)(F) requires the prime contract to be exempt for the subcontract to be exempt. The court emphasized that the legislative history supported this interpretation. The Senate Finance Committee limited the exemption for subcontracts to those under prime contracts or intermediate contracts that were exempt by reason of Section 403(i)(1). The court noted the intent behind Section 403(i)(1)(F) was to ensure that subcontracts under exempt prime contracts for fiscal years ending before June 30, 1943, would also be exempt from April 28, 1942. Since the prime contracts were not exempt for the calendar year 1942, the petitioners' subcontracts were not exempt either. The court stated, "Congress clearly intended that only such subcontractors be exempt as were let under prime or intermediate contracts which were exempt."

Practical Implications

The Lichter decision clarifies that subcontractors cannot claim exemption from renegotiation under the Renegotiation Act unless the prime contracts under which they operate are also exempt. This ruling emphasizes the importance of examining the prime contract's status when determining whether a subcontract is subject to renegotiation. It highlights that the exemption for subcontracts is derivative and dependent on the exemption of the underlying prime contract. Attorneys advising contractors and subcontractors on government contracts must carefully assess the prime contract's terms and conditions to determine whether renegotiation provisions apply to subcontracts. Later cases have applied this principle, reinforcing the dependent nature of the subcontract exemption.

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