***Estate of Coster v. Commissioner*, 22 T.C. 296 (1954)**

Section 107 of the Internal Revenue Code, which allows for the averaging of income earned over a long period, applies to attorney's fees for legal services distinct from the trustee's duties and commissions, provided the services span the required time period and the compensation meets the statutory threshold.

Summary

The case concerns the application of Section 107 of the Internal Revenue Code, allowing for the averaging of income earned over a period of 36 months or more, to an attorney who also served as an executor and trustee of an estate. The court determined that the attorney's fees for legal services related to the Cochran estate qualified for income averaging under Section 107 because they were separate from his duties as trustee. The court found that the executor and trustee commissions did not qualify for the benefits of the section because the period during which these services were performed was not properly established and the record did not demonstrate a period of 36 months of services. The court also affirmed that the attorney could split the income with his wife, based on the principle established in *Ayers J. Stockly*.

Facts

The petitioner, an attorney, served as executor and trustee for the Emily Coster estate and also provided legal services. Upon the termination of the Coster estate proceedings, the petitioner received fees for his services in both capacities. Separately, the petitioner provided legal services to the Cochran estate. The petitioner sought to apply Section 107 of the Internal Revenue Code to his compensation, allowing him to average income over a longer period. The petitioner split the income with his wife. The Commissioner contested the application of Section 107, arguing that the fees did not qualify because the services were not rendered over a 36-month period or because they were not separable.

Procedural History

The case was heard in the United States Tax Court. The Commissioner of Internal Revenue determined that the taxpayer's income did not qualify for the income-averaging provisions of Section 107. The taxpayer challenged the Commissioner's determination, asserting that his compensation qualified for the benefits of Section 107. The Tax Court considered the case to determine the proper application of Section 107 to the petitioner's income, and whether the income could be split with his wife. The Tax Court ruled in favor of the taxpayer on some issues and in favor of the Commissioner on others. The decision regarding splitting of income with the taxpayer's wife was based on the principle established in *Ayers J. Stockly*. The Dana and Jones fees were stipulated to have been calculated correctly.

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Issue(s)

1. Whether the attorney's fees received for services rendered to the Emily Coster estate qualified for the income averaging provisions of Section 107.
2. Whether the executor and trustee commissions received by the petitioner upon the termination of the proceedings in the Coster estate qualified for income averaging under Section 107.
3. Whether the legal fees received for services to the Cochran estate qualified for the income averaging provisions of Section 107.
4. Whether the petitioner's computation under section 107 by "splitting" the income with his wife was proper.

Holding

1. No, because the record did not demonstrate that the attorney's services spanned a sufficient period.
2. No, because there was no evidence of the performance of any services after September 1, 1947, the date set out in petitioner's final account.
3. Yes, because under New York law, the trustee's legal services were rendered and compensated separately and were entirely severable.
4. Yes, because the court saw no reason to depart from the principle of *Ayers J. Stockly*.

Court's Reasoning

The court applied Section 107 of the Internal Revenue Code, focusing on whether the compensation received was for "personal services covering a period of thirty-six calendar months or more." The court determined that for attorney's fees, "unitary," "continuous," or "homogeneous" services are necessary for Section 107's application. The court found that the attorney's legal services were distinct from his role as executor and trustee. The court differentiated between the roles, noting the New York State Surrogate's Court Act allows separate compensation for legal services. The court reasoned that the legal services were severable from the trustee's duties. The court emphasized the necessity of proving the length of the service period and the separation of roles to satisfy Section 107. The court noted that "the client is able to pay and could have paid at any time payment was required" suggesting the services rendered in the Coster estate were not "unitary," "continuous," or "homogeneous." The court also addressed the issue of splitting the income, approving the practice based on its prior ruling in *Ayers J. Stockly*.

Practical Implications

Attorneys and tax professionals should carefully document the scope and duration of services when seeking to apply Section 107. This case highlights the importance of segregating different types of services and maintaining clear records of the commencement and completion dates of each service. This case clarifies the

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distinction between services rendered as an attorney and as a trustee or executor. For income averaging under Section 107, it is essential that the attorney's legal services are demonstrably separate from the trustee's or executor's duties, and that these services span the required period. Furthermore, the case affirms the ability to split income with a spouse, providing guidance on tax planning. The rule about the necessity of "unity," "continuity," or "homogeneity" in services continues to be relevant in determining the applicability of Section 107.

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