23 T.C. 1 (1954)

To claim a loss deduction for property seized by a foreign government, a taxpayer must prove the actual seizure or confiscation of the property.

Summary

The taxpayer, George Eres, sought a loss deduction for stock he owned in a Yugoslavian corporation, claiming the stock was confiscated in 1945. The U.S. Tax Court determined that Eres's stock was deemed worthless in 1941 due to war. While Eres successfully recovered his interest in the stock in 1945, the court found he failed to prove that the Yugoslavian government subsequently confiscated the stock in 1945, therefore denying the loss deduction under Internal Revenue Code Section 23 (e). The court emphasized that Eres needed to provide evidence, such as a governmental decree, to prove the confiscation of his property to claim the tax loss.

Facts

Eres, a U.S. citizen, owned stock in Ris corporation, a Yugoslavian company, purchasing 2,850 shares between 1936 and 1938. Yugoslavia was invaded by Germany in April 1941 and the United States declared war on Germany in December 1941. Eres left Yugoslavia in 1940 and placed the stock in the name of a nominee for safekeeping. In March 1945, Zagreb was liberated from German occupation. Eres's attorney in Yugoslavia, Alexander Green, confirmed his ownership of the shares, which were in his nominee's possession. Ris corporation confirmed Eres's ownership and made payments to his sister-in-law. Eres claimed a loss deduction for 1945 due to confiscation.

Procedural History

The Commissioner of Internal Revenue determined a tax deficiency for 1945, disallowing Eres's claimed loss deduction. The case was brought before the U.S. Tax Court. The Tax Court reviewed the facts and the applicable tax law.

Issue(s)

1. Whether Eres recovered his interest in his stock in the Yugoslavian corporation in 1945.

2. Whether Eres sustained a loss in 1945 due to the confiscation of his stock by the Yugoslavian government.

Holding

1. Yes, because the court found that Eres, through his attorney, successfully reasserted his ownership of the stock in 1945.

2. No, because Eres failed to provide sufficient evidence that the Yugoslavian government confiscated his stock in 1945.

Court's Reasoning

The court applied Section 23 (e) of the Internal Revenue Code of 1939, which allows deductions for losses sustained during the taxable year and not compensated for by insurance or otherwise. The court first addressed the impact of the war declaration and deemed the stock worthless in 1941. The court found that Eres successfully recovered his interest in the stock in 1945. However, to claim a loss deduction, Eres had to prove a loss occurred in 1945, after the recovery. The court distinguished the case from the precedent case of *Andrew P. Solt*, where a governmental decree established confiscation. The court noted: "We do not have the proof of governmental confiscation in this case such as was present in the Solt case where it was established that there was a confiscation through the issuance of a governmental decree." Eres failed to show a specific act or decree by the Yugoslav government that deprived him of his stock in 1945, despite attempts to introduce evidence of the government's actions. The court emphasized the lack of concrete proof of governmental confiscation of the stock, and ruled against the deduction claim.

Practical Implications

This case underscores the importance of providing concrete evidence of a loss event to substantiate a tax deduction. In cases involving property seized by foreign governments, taxpayers must provide specific proof of confiscation, such as governmental decrees or other official actions. The court's emphasis on the need for documentary evidence, such as a government decree, is crucial for legal practitioners. This case reinforces the requirement for taxpayers to clearly establish the timing of the loss event. This case serves as a reminder that general assertions of confiscation, without supporting documentation, are insufficient. Taxpayers must show their property was lost in the specific tax year for which they seek a deduction.

