*28 T.C. 282 (1957)*

When a taxpayer qualifies for relief under section 722 of the Internal Revenue Code of 1939 due to commencement of business during the base period, the court determines a fair and just amount representing normal earnings to be used as a Constructive Average Base Period Net Income (CABPNI) for purposes of excess profits tax.

**Summary**

Arkansas Motor Coaches, Ltd. (petitioner) sought redetermination of its income and excess profits tax for 1942, challenging the Commissioner's calculation of its Constructive Average Base Period Net Income (CABPNI). The petitioner, a bus company that began operations during the base period, contended that its low base period earnings were due to the lack of a certificate of convenience and necessity. The Tax Court, after examining the facts, including the competition faced and the timing of the certificate, found that while the petitioner qualified for relief under section 722(b)(4) of the Internal Revenue Code of 1939, the Commissioner's initial CABPNI determination was too low. The court determined a higher CABPNI of $22,000, emphasizing the importance of a 'fair and just amount' in determining the excess profits tax.

**Facts**

Arkansas Motor Coaches, Ltd. was organized in 1935 and began operating a bus line between Memphis and Texarkana via Little Rock and Hot Springs. Its application for a certificate of convenience and necessity from the Interstate Commerce Commission (ICC) was opposed and was not granted until 1940, although the company operated without interference. The petitioner faced competition from Missouri Pacific Transportation Company. The petitioner's base period net income was low. The Commissioner determined a CABPNI of $15,472. The petitioner claimed it was entitled to a higher CABPNI of $59,486.70, later amended to $68,188.86 in its brief.

**Procedural History**

The case originated in the U.S. Tax Court, where the petitioner challenged the Commissioner's determination of income and excess profits tax for 1942. The Commissioner had allowed partial relief under section 722 of the Internal Revenue Code. The petitioner contested the CABPNI calculation, leading to the court's review of the facts and application of the law.

**Issue(s)**

Whether the petitioner established that a "fair and just amount representing normal earnings to be used as a CABPNI for purposes of an excess profits tax" for 1942 was in excess of the amount determined by the Commissioner.

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## Holding

Yes, because the court found that the petitioner was entitled to a CABPNI higher than that determined by the Commissioner. The court determined that the CABPNI should be $22,000.

## Court’s Reasoning

The court found that the petitioner qualified for relief under section 722(b)(4) because it commenced business during the base period. The court considered the fact that the lack of a certificate was not the sole cause of its difficulties. The court noted competition from Missouri Pacific, the acquisition of adequate terminals and equipment, and the petitioner’s representation in bus industry publications. The court, emphasizing the objective of determining a “fair and just amount representing normal earnings,” determined a CABPNI of $22,000 based on the facts and circumstances presented. The court also stated that the CABPNI should be adjusted for the years 1940 and 1941.

## Practical Implications

This case is a precedent for tax attorneys and those litigating tax disputes when determining the proper CABPNI. Specifically, when determining the CABPNI, courts will examine the facts and circumstances presented to determine the “fair and just amount.” The case highlights that the lack of a certificate of convenience and necessity was not the sole or principal cause of the petitioner’s base period difficulties. Instead, the court examined the business’s competition, equipment, and terminal arrangements. The determination of a fair and just amount is critical for those filing taxes as a relief for excess profits.

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