***28 T.C. 446 (1957)***

For purposes of calculating percentage depletion under the Internal Revenue Code, the "commercially marketable mineral product" is the first product that is marketable in commerce, determined by whether there is an established market for the product, not merely its potential use.

**Summary**

Riverton Lime & Stone Co. produced hydrated hydraulic lime from limestone. The IRS argued that the initial crushing of the limestone constituted the first commercially marketable product, thereby limiting the company's percentage depletion allowance. The Tax Court disagreed, finding that hydrated hydraulic lime was the first commercially marketable product because there was no established market for the crushed limestone. The court held that the ordinary treatment processes applied to the limestone to produce the lime were part of the mining process, entitling Riverton to calculate its depletion allowance based on the gross income from the sale of the lime.

**Facts**

Riverton Lime & Stone Co. quarried limestone and processed it into hydrated hydraulic lime. The limestone could have been used for agricultural purposes in its crushed state, but due to chemical characteristics of the stone, this was not economically feasible. The company sold hydrated hydraulic lime, a cementitious product, in both pure and admixed forms. The IRS asserted that the initial crushing of the limestone was the first commercially marketable product, while Riverton claimed that the lime was the first marketable product.

**Procedural History**

The Commissioner of Internal Revenue determined deficiencies in Riverton's income and excess profits taxes for 1951 and 1952. Riverton petitioned the United States Tax Court to challenge the IRS's method of calculating the percentage depletion allowance. The Tax Court ruled in favor of the taxpayer.

**Issue(s)**

1. Whether hydrated hydraulic lime was the first commercially marketable product mined by petitioner within the meaning of Section 114(b)(4) of the 1939 Code, for purposes of computing allowable depletion based on the gross income from such product.

2. What was the proper amount of gross income realized by petitioner from the sale of such product?

**Holding**

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1. Yes, because hydrated hydraulic lime was the first product for which there was a commercial market, rendering the prior steps preliminary processing only.

2. The court held that Riverton's method of calculating the depletion basis by multiplying the total tonnage of hydrated hydraulic lime sold by a price representative of the minimum selling price for the pure product, and adding the amount realized from the sale of waste material, was correct.

**Court's Reasoning**

The court relied on Section 114(b)(4) of the 1939 Code, which defines

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