***30 T.C. 1292 (1958)***

A mortgage premium received by a mortgagor constitutes taxable income in the year of receipt and is not amortizable over the term of the mortgage note, unless specifically authorized by statute or regulation.

**Summary**

Bayshore Gardens, Inc. (the taxpayer) received a premium from a bank in connection with a Federal Housing Administration (FHA)-insured mortgage loan. The Commissioner of Internal Revenue determined that the premium was taxable income in the year it was received. The taxpayer argued that it should be able to amortize the premium over the life of the mortgage note. The Tax Court agreed with the Commissioner, holding that the premium was taxable income in the year received because no statute or regulation permitted amortization of mortgage premiums, unlike premiums from the issuance of corporate bonds. This case underscores the importance of understanding how different financial instruments are treated for tax purposes and the need for specific legal authority to deviate from general income recognition rules.

**Facts**

Bayshore Gardens, Inc., a real estate corporation, obtained an FHA-insured mortgage loan from Lincoln Savings Bank of Brooklyn to finance an apartment complex. The bank, in exchange for a desirable investment, agreed to pay a premium of 3.75% above the loan's principal amount. Bayshore Gardens received a net sum of $43,407 in 1950 from this premium after a portion of the premium was paid to a broker. Bayshore Gardens treated the payment as a prepaid expense and amortized it over the life of the mortgage. The Commissioner determined that the premium constituted taxable income in the year of receipt.

**Procedural History**

The Commissioner of Internal Revenue issued deficiencies in income tax for 1950 and 1951. The issue regarding the taxability of the mortgage premium went before the United States Tax Court.

**Issue(s)**

1. Whether the payment received by the taxpayer was a premium or a commission.

2. Whether, if the payment was a premium, the taxpayer could amortize the premium over the term of the mortgage note.

**Holding**

1. Yes, the payment was a premium and not a commission.

 

2. No, because the premium was taxable in the year received.

**Court's Reasoning**

The court first addressed whether the payment was a premium or a commission. The court determined that the payment from the bank was a premium to obtain a desirable investment, and the amount of the premium paid to a broker was a separate transaction between the taxpayer and its agent. The court then considered whether the premium could be amortized. The court found that, absent any specific provisions in the Internal Revenue Code or applicable regulations, the premium constituted taxable income in the year it was received. The court distinguished the treatment of bond premiums, which are addressed in specific tax regulations, and noted that no such provision existed for mortgage premiums. The court focused on Sections 41 and 42 of the Internal Revenue Code of 1939 (similar to modern 26 U.S.C. 41 and 42), which provide the general rules of accounting but do not address premiums.

The court stated, "We conclude that there is no provision of the Internal Revenue Code and no pertinent regulation of the Commissioner which would authorize the petitioner to amortize the premium received by it upon the execution of its mortgage note."

 