KWTX Broadcasting Company, Inc., Petitioner, v. Commissioner of Internal Revenue, Respondent, 31 T.C. 972 (1959)

Expenditures incurred to acquire a television broadcasting license, including payments to a competing applicant to withdraw its application and direct costs such as legal and travel fees, are capital expenditures and are not deductible as ordinary business expenses or amortizable due to the indeterminate life of the license.

Summary

KWTX Broadcasting Company sought to deduct as ordinary business expenses or amortize payments made to a competitor, Waco Television Corporation, to withdraw its application for a television broadcast license, along with legal and travel expenses incurred in pursuing its own application. The Tax Court ruled against KWTX, holding that these expenditures were capital in nature because they were incurred to acquire a long-term asset—the broadcast license. The court reasoned that the payment to Waco eliminated a competitor and enhanced KWTX's chances of obtaining the license, while the direct application costs were integral to acquiring the license itself. Furthermore, the court determined that the license's useful life was indeterminate due to the high likelihood of renewal, precluding amortization.

Facts

KWTX Broadcasting Company and Waco Television Corporation were competing applicants for a television station license on Channel 10. To improve its prospects of obtaining the license, KWTX entered into an agreement with Waco. Under this agreement, KWTX agreed to reimburse Waco for its expenses, up to $45,000, incurred in its application process, in exchange for Waco withdrawing its application and appeal. In 1954, KWTX paid Waco $45,000 under this agreement. KWTX also incurred $8,382.86 in legal fees and $3,983.47 in travel expenses related to its own license application process.

Procedural History

KWTX Broadcasting Company petitioned the Tax Court to contest the Commissioner of Internal Revenue's disallowance of deductions for the $45,000 payment, legal fees, and travel expenses as ordinary and necessary business expenses or amortization deductions.

Issue(s)

1. Whether the $45,000 payment to Waco Television Corporation to withdraw its application for a television broadcast license is deductible as an ordinary and necessary business expense under Section 162 of the Internal Revenue Code of 1954 or as a loss under Section 165(a).

2. Whether legal fees and travel expenses incurred in applying for a television

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broadcast license, and alternatively the $45,000 payment, are amortizable under Section 167 of the Internal Revenue Code of 1954.

Holding(s)

1. No, because the $45,000 payment was a capital expenditure made to acquire a television broadcast license by eliminating a competing applicant, and not an ordinary and necessary business expense or a deductible loss.

2. No, because the useful life of a television broadcast license is of indeterminate duration due to the high likelihood of renewal, and therefore, the costs associated with obtaining it are not amortizable.

Court's Reasoning

The Tax Court reasoned that the $45,000 payment to Waco was not an ordinary and necessary business expense under Section 162. Distinguishing *All States Freight v. United States*, the court emphasized that the payment was not to defend an existing business but to acquire a capital asset—the television operating permit and license. The court stated, "This was not an ordinary and necessary business expense but was in the nature of a capital expenditure in connection with the television operating permit and license which petitioner was seeking." The court also dismissed the claim for a loss deduction under Section 165(a), stating, "We do not see where petitioner suffered any loss in 1954 when it paid $45,000 to Waco Television Corporation…in making such a payment to its competitor to induce it to withdraw its appeal to the F.C.C., it certainly cannot be said that petitioner suffered any loss within the meaning of section 165 (a)."

Regarding amortization under Section 167, the court relied on Revenue Ruling 56-520, which held that costs to obtain a television license are capital and not depreciable because the license's useful life is of an indeterminate duration. The court noted the high probability of license renewal, stating, "In the past a large number of these applications for renewal of television broadcasting licenses has been granted and none has been denied." Therefore, the court concluded that the license's useful life was not limited to the initial license term and denied amortization, finding that "the useful life of the asset is of an indeterminate duration, a deduction for depreciation thereon is not allowable…"

Practical Implications

KWTX Broadcasting establishes that costs incurred to obtain a television broadcast license, including payments to competitors to withdraw applications and direct application expenses, are capital expenditures. This means businesses cannot immediately deduct these costs as ordinary business expenses. Furthermore, the case highlights the principle that intangible assets with an indeterminate useful life, such as broadcast licenses with a high probability of renewal, are not eligible for

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amortization. This ruling has broad implications for businesses in regulated industries requiring licenses or permits. It underscores the importance of distinguishing between expenses that maintain existing business operations and those that secure long-term capital assets. Subsequent cases and revenue rulings have consistently applied this principle, reinforcing the capitalization requirement for costs associated with acquiring licenses with indefinite renewal prospects.

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