31 T.C. 1280 (1959)

For a bad debt to be deductible as a business expense, the taxpayer must prove the debt was proximately related to their trade or business, demonstrating that lending money or promoting/organizing businesses was a regular and significant activity, not merely an occasional undertaking.

Summary

In *Barish v. Commissioner*, the U.S. Tax Court addressed whether a taxpayer could deduct bad debts as business expenses. The taxpayer, Max Barish, claimed that loans to a used-car dealership (Barman) were business debts because he was in the business of promoting, organizing, and financing businesses, as well as lending money. The court disallowed the deduction, finding that Barish's activities were not extensive enough to qualify as a business, particularly because he failed to demonstrate a direct relationship between the loans and his alleged business activities. The court emphasized that there must be a proximate relationship between the bad debt and the taxpayer's trade or business to qualify for a business bad debt deduction.

Facts

Max Barish, the taxpayer, was the president and a 50% shareholder of Max Barish, Inc., a new-car dealership, where he worked extensively, but also had other business interests. He also owned shares in Barman Auto Sales, Inc. (Barman), a used-car dealership, and made loans to it that became worthless. Barish sought to deduct these worthless loans as business bad debts. The Commissioner of Internal Revenue disallowed the deduction, classifying the debts as nonbusiness debts.

Procedural History

The Commissioner determined a tax deficiency, disallowing Barish's claimed business bad debt deduction. Barish petitioned the U.S. Tax Court to challenge the Commissioner's decision.

Issue(s)

Whether the losses suffered from the worthlessness of certain loans made by Max Barish should be treated as business or nonbusiness bad debts.

Holding

No, the U.S. Tax Court held that the losses were nonbusiness bad debts because the taxpayer failed to prove a proximate relationship between the loans and any established business activity. Barish had not provided sufficient evidence that he was in the business of promoting, organizing, or financing businesses, or in the business of lending money.

Court's Reasoning

The court applied Thomas Reed Vreeland, <span normalizedcite="31 T.C. 78">31 T.C. 78, and other precedent. It examined whether Barish had sufficiently proven that he was in the business of either promoting/organizing/financing businesses or the business of lending money. The court found the evidence insufficient. Regarding promoting/organizing/financing, the court noted Barish's lack of involvement in the initial organization of the debtor, Barman. Regarding lending money, the court found that Barish's lending activities were not extensive or regular enough to constitute a business. The court emphasized that for a bad debt to be a business bad debt, there must be a "proximate relationship" between the bad debt and the alleged business. In concluding, the court observed that the amount of the Barish's loans and interest income did not support a finding that he was "in the business of lending money."

Practical Implications

This case highlights the importance of careful documentation and substantial evidence when claiming business bad debt deductions. Attorneys should advise clients to:

- Maintain detailed records of all loans, including dates, amounts, terms, and purposes.
- Document the business activity related to the loans, such as promotional activities, organizational efforts, or ongoing financing relationships.
- Demonstrate that lending money is a significant and regular part of the taxpayer's activities, not just an occasional event.
- Be aware of the "proximate relationship" requirement: ensure the loan is directly tied to the taxpayer's established business.

Later cases citing *Barish v. Commissioner* underscore that bad debt deductions are limited to situations where the taxpayer's lending activities are so substantial as to constitute a business. Tax advisors must carefully assess the nature and extent of a taxpayer's lending activity and its relationship to any claimed trade or business before advising on the deductibility of bad debts.

