103 T.C. 285 (1994)

The Accelerated Cost Recovery System (ACRS) depreciation deduction under 26 U.S.C. § 168 is applicable to tangible personal property used in a trade or business that is subject to wear and tear, even if the property may appreciate in value over time.

Summary

Brian P. Liddle, a professional musician, claimed a depreciation deduction for a 17th-century Ruggeri bass viol used in his business. The Commissioner of Internal Revenue disallowed the deduction, arguing the viol would appreciate, not depreciate. The Tax Court, referencing its decision in *Simon v. Commissioner*, held that Liddle was entitled to the depreciation deduction under ACRS. The court reasoned that the viol met all four criteria for ACRS property: it was tangible personal property, placed in service after 1980, used in Liddle's trade or business, and subject to wear and tear from that use. The court emphasized that depreciation under ACRS is based on wear and tear and cost recovery, not market value fluctuations.

Facts

Brian P. Liddle is a full-time professional musician playing the bass viol. He purchased a 17th-century Ruggeri bass viol in 1984 for $28,000, insuring it for $38,000. Liddle used the viol as his primary instrument for practice, auditions, rehearsals, and performances with professional orchestras. Expert testimony established that regular use of a stringed instrument, even with proper maintenance, causes wear and tear, including nicks, scratches, and varnish wear. While the viol was maintained and its market value increased, Liddle exchanged it in 1991 for a different bass viol appraised at $65,000.

Procedural History

The Commissioner issued a notice of deficiency disallowing the depreciation deduction claimed by Brian P. and Brenda H. Liddle for the 1987 tax year. The Liddles petitioned the Tax Court for redetermination. The case was initially assigned to a Special Trial Judge, who reached a contrary legal conclusion. The case was then reassigned to Judge Laro, who, with the majority, agreed with the Special Trial Judge's factual findings but reversed the legal conclusion, ruling in favor of the Liddles.

Issue(s)

1. Whether the petitioners are entitled to a depreciation deduction under the Accelerated Cost Recovery System (ACRS) for a 17th-century Ruggeri bass viol used in their trade or business as professional musicians.
2. Whether the potential appreciation in value of an asset, due to its status as a

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collectible or antique, precludes it from being considered depreciable property under ACRS.

Holding

1. Yes, because the bass viol qualifies as recovery property under 26 U.S.C. § 168 as it is tangible personal property, was placed in service after 1980, is used in the petitioner's trade or business, and is subject to wear and tear.
2. No, because the ACRS depreciation deduction is based on the physical wear and tear and the recovery of investment in an income-producing asset, and is not negated by potential market appreciation of the asset.

Court's Reasoning

The court reasoned that the ACRS, enacted by the Economic Recovery Tax Act of 1981, was designed to simplify depreciation and stimulate investment by moving away from the complex "useful life" determinations required under prior law. The court emphasized that under ACRS, "recovery property" is broadly defined and includes tangible property subject to depreciation due to exhaustion, wear and tear, or obsolescence, used in a trade or business. The court found the bass viol met the four-prong test for recovery property established in *Simon v. Commissioner*: it was tangible, placed in service after 1980, used in business, and subject to wear and tear. The court rejected the Commissioner's argument that appreciation in value negates depreciation, stating that depreciation under ACRS is an accounting mechanism to match the cost of an asset to the income it generates over time and does not necessarily reflect market value changes. The court cited *Fribourg Navigation Co. v. Commissioner*, stating, "tax law has long recognized the accounting concept that depreciation is a process of estimated allocation which does not take account of fluctuations in valuation through market appreciation." The dissenting opinions argued that the bass viol, as a collectible and work of art, does not have a determinable useful life and should not be depreciable, even under ACRS, and that the majority opinion disregarded legislative history and precedent.

Practical Implications

Liddle v. Commissioner clarifies that assets used in a trade or business are depreciable under ACRS if they are subject to wear and tear, even if they are collectibles or antiques that may appreciate in market value. This case is significant for self-employed individuals and businesses using tangible personal property in their operations, particularly those dealing with unique or potentially appreciating assets like musical instruments, antiques, or art. It establishes that the focus for ACRS depreciation is on the asset's function in the business and its physical deterioration, not its potential investment value. Legal practitioners should advise clients that the IRS cannot deny depreciation deductions solely based on an asset's potential for appreciation, as long as the asset is used in a trade or business and is subject to wear and tear. This ruling has been applied in subsequent cases to allow

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depreciation for various types of business assets that also have collectible or artistic value.

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