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Tax Court & Board of Tax Appeals Reported Decisions

JACK E. MORRISON, 54 TC 758

Jack E. Morrison and Grace M. Morrison, Petitioners v. Commissioner of Internal Revenue,
Respondent

Case Information:

[pg. 758]

Code Sec(s):	
Docket:	Docket No. 962-68.
Date Issued:	04/09/1970
Judge:	Opinion by QUEALY, J.
Tax Year(s):	Years 1962, 1963, 1964.
Disposition:	Decision for Commissioner.

HEADNOTE

1. INCOME—To whom taxable—income to corporation or stockholder—transactions between corporation and stockholder. Stockholder constructively received and was taxable on one-half of commissions on insurance business obtained by agent as result of stockholder's leads: commissions weren't taxable to corp. although they were paid to it. Corp., owned by stockholder and agent equally, didn't earn right to commissions. Corp.

wasn't licensed by state nor authorized by its charter to sell or solicit insurance. It didn't control solicitation and sale of insurance and never had right to direct activities of stockholder or agent.

Reference(s): 1970 P-H Fed. ¶ 7562.

Syllabus

Official Tax Court Syllabus

Held: The petitioner and a licensed insurance agent entered into an agreement whereby commissions on insurance business, obtained by the agent as a result of leads by the petitioner, would be paid to a corporation the stock of which was owned one-half by each. The petitioner failed to establish that the insurance commissions were attributable to any activity on behalf of the corporation, rather than to the individual efforts of the petitioner and the agent. Accordingly, petitioner is taxable on one-half of the commissions. *Jerome J. Roubik*, 53 T.C. 365 (1969).

Counsel

Dean M. Alexander, for the petitioner.

Stephen E. Silver, for the respondent.

Quealy, Judge:

The respondent determined deficiencies in petitioners' income taxes as follows:

Taxable year	Tax deficiency
1962 -----	\$586.13
1963 -----	535.00
1964 -----	563.25

The petitioners have conceded certain adjustments made by respondent. The only issue presented for decision is whether petitioners Jack E. and Grace M. Morrison had constructive receipt of income amounting to \$1,029 in 1962, \$1,259 in 1963, and \$1,500 in 1964. [pg. 759]

FINDINGS OF FACT

Some of the facts have been stipulated and are found accordingly. The stipulations and exhibits attached thereto are incorporated herein by this reference.

Petitioners Jack E. and Grace M. Morrison are husband and wife.¹ At the time of filing their petition in this case, they were residents of Portland, Ore. Petitioners filed joint Federal income tax returns for the calendar years 1962, 1963, and 1964 with the district director of internal revenue, Portland, Ore. Petitioners computed their income on the cash receipts and disbursements method of accounting.

Century Properties, Inc. (hereinafter C.P.I.), an Oregon corporation, was incorporated on August 6, 1958. Its principal office was located at 2042 Lloyd Center, Portland, Ore. Prior to 1961 the stock of C.P.I. was owned equally by James B. Nibley and Joseph H. Herrle. During that period of time the name of the corporation was Nibley and Herrle Properties, Inc.

On January 14, 1961, Jack E. Morrison acquired 50 percent of the stock of C.P.I. From that date through the years in issue, Joseph H. Herrle (hereinafter Herrle) and Jack E. Morrison (hereinafter Morrison) were each owners of 50 percent of the stock of C.P.I.

Under C.P.I.'s articles of incorporation, as accepted for filing by the State of Oregon on August 6, 1958, C.P.I. was not specifically authorized to conduct an insurance agency and insurance brokerage business. C.P.I. was not licensed to sell or otherwise solicit insurance in the years 1962 through 1964.

Herrle was a licensed insurance agent in the State of Oregon. The Herrle Insurance Agency, which was located at 2042 Lloyd Center, Portland, generated annual billings from the writing of group and casualty insurance in excess of \$5 million.

Morrison was the president of Morrison Oil Co. Members of Morrison's family were the controlling shareholders of Morrison Oil Co. Morrison was not a licensed insurance agent or solicitor.

Herrle secured all the insurance business of Morrison Oil Co. prior to the time Morrison acquired his interest in C.P.I. and retained the commissions.

On or about December 15, 1960, Morrison agreed to purchase the stock of Nibley and Herrle Properties, Inc., owned by James B. Nibley. It was agreed at that time that the name of the corporation would be changed to Century Properties, Inc. An agreement was then entered into by Herrle and Morrison pursuant to which Herrle agreed to assign to the corporation insurance commissions written by Herrle on business [pg. 760]referred to him by Morrison, including commissions on the insurance of Morrison Oil Co. With respect to this such

insurance, the parties testified that they intended that any services performed by either of them would constitute services performed as employees or on behalf of C.P.I.

During the years in issue, Morrison referred potential insurance clients to Herrle. It was then Herrle's responsibility to develop such potential insurance business by selling policies to these clients. Herrle was aware that State law made it illegal for a licensed agent to pay money or things of value to an unlicensed individual for soliciting or referring insurance.

Herrle was paid the gross premium on insurance written for Morrison Oil Co. and others who were referred to him by Morrison. Herrle then paid the net premium to the insurer company, and the balance, the commission, to C.P.I. However, Herrle retained the volume bonus earned on insurance written for Morrison Oil Co.

C.P.I.'s articles of incorporation were amended in 1965 to specifically authorize C.P.I. to conduct an insurance agency and brokerage business.

A record of policy expiration dates was maintained at the Lloyd Center address in files separate from the files of the Herrle Insurance Agency. Otherwise, the records of C.P.I. consisted only of a checkbook and deposit book.

Other than the expiration list, the tangible assets of C.P.I. consisted of a parcel of improved real property and an airplane. Morrison and Herrle were licensed pilots and they both used the aircraft. The U.S. corporation income tax returns filed by C.P.I. for the years 1962 to 1964 inclusive referred to the principal business activity of the corporation as "Insurance and rentals." However, the returns did not show any employees or officers to whom the corporation paid compensation for services during the years in question.

Neither Herrle nor Morrison received any cash distributions from C.P.I. during 1962 through 1964. Morrison did not receive any payments from Herrle.

In his notice of deficiency, the respondent determined that the petitioner received compensation for services rendered to Herrle which was not reported on petitioner's returns.

OPINION

It is the respondent's position that C.P.I. had no legitimate business purpose that would justify the inclusion of the commissions on its books as income. Respondent argues that Morrison and Herrle, as individuals, agreed to split commissions earned on the insurance Herrle sold to Morrison Oil Co. and to clients referred to Herrle by [pg. 761]Morrison. In respondent's view once a premium was paid to Herrle, that portion representing one-half of the


commission was unqualifiedly subject to Morrison's demand as compensation earned in connection with services rendered to Herrle.²

Petitioners contend that the insurance business was carried on by C.P.I. through its employees, Morrison and Herrle, and that the commission income was properly that of C.P.I. The facts, however, do not support this contention.

The petitioner concedes that he performed services in the referral of customers to Herrle on which insurance was written and commissions paid to C.P.I. For purposes of decision, therefore, accepting the petitioner's argument at face value, we must assume that some part of the commissions earned was attributable to the services of the petitioner. The balance would be attributable to the services of Herrle. As a result of those services, certain commissions were paid by Herrle to C.P.I.

Clearly C.P.I. did not earn the right to the commissions in the first instance. Herrle was the only one licensed to write insurance. The petitioner contends that the commissions were "earned" by the petitioner and Herrle acting as employees of C.P.I. Assuming that the commissions were thus earned by the individuals, there is no basis for finding that the individuals were acting as employees of the corporation.

In the years in issue C.P.I. was not licensed by the State of Oregon, nor authorized by its corporate charter, to sell or otherwise solicit insurance. C.P.I. had established no relationship with any insurance underwriters or the insurance companies that paid over commissions on insurance to Herrle. The insurance on Morrison Oil Co. was obtained by Herrle prior to the time when C.P.I. purportedly entered into the insurance business. There is no indication that either petitioner or Herrle represented that they were selling insurance on behalf of C.P.I., or that the clients whose policies generated the commissions looked to C.P.I. rather than Herrle as their insurance agent. We find nothing in the record that would indicate that direction and control over the solicitation and sale of the insurance was exercised by C.P.I. C.P.I. never had the right to direct the activities of either the petitioner or Herrle.

The corporation had no employment records, filed no employment reports, and incurred no expenses in connection with the procuring of such business. In fact, there is nothing in the record to show that [pg. 762]the corporation transacted any business other than the rental of property and the maintenance of an airplane. The petitioner has failed to establish that the services, on account of which the payments were made to C.P.I., resulted from the corporate efforts of C.P.I. rather than the individual efforts of the petitioner and Herrle. *Jerome J. Roubik*,  53 T.C. 365 (1969).

Based on the record as a whole, the conclusion is inescapable that C.P.I. did not earn any of the income generated from the services of either the petitioner or Herrle and such income is taxable to the individuals. *Jerome J. Roubik, supra*. In establishing a means whereby such income would, in effect, be shared equally by the petitioner and Herrle through payments to C.P.I., we must also assume that the value of the services or contribution to the earning of the income was in the same proportion.

Decision will be entered for the respondent.

¹ Grace M. Morrison is a party to these proceedings solely by reason of her filing a joint return with her husband.

² In an amendment to his answer, respondent raised the theory that Morrison as a stockholder of C.P.I. was in receipt of a dividend income to the extent of the value of Morrison's use of the airplane owned by C.P.I. This theory was abandoned by respondent at the trial.

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