***14 T.C. 168 (1950)***

An insurance agent who works under the supervision and control of an insurance company is considered an employee, not an independent contractor, and is therefore subject to the tax deduction limitations applicable to employees.

**Summary**

Raymond Kershner, an insurance agent for Metropolitan Life Insurance Co., deducted certain occupational expenses from his income tax return, claiming he was an independent contractor. The IRS disallowed these deductions, arguing that Kershner was an employee and had elected to be taxed on adjusted gross income using the standard deduction. The Tax Court agreed with the IRS, holding that Kershner was indeed an employee due to the control Metropolitan exercised over his work, and his election to use the standard deduction prevented him from claiming further deductions.

**Facts**

Raymond Kershner worked as an agent for Metropolitan Life Insurance Co. in Martinsburg, West Virginia. He sold life, accident, health, and industrial insurance. Kershner operated out of Metropolitan's Martinsburg office, reporting to and being supervised by Richard Biggs, the office manager. His contract required him to devote full time to Metropolitan, adhere to its rules, and be subject to its control. Kershner's compensation was primarily commission-based, subject to a minimum weekly salary. He used his car for work and incurred expenses for travel, meals, and other business-related items, which he sought to deduct.

**Procedural History**

Kershner filed a joint income tax return with his wife for 1945, deducting $601.85 in occupational expenses from his gross income. The Commissioner of Internal Revenue disallowed the deduction, resulting in a deficiency notice. Kershner petitioned the Tax Court for a redetermination of the deficiency.

**Issue(s)**

1. Whether Kershner was an employee or an independent contractor of Metropolitan Life Insurance Co. for income tax purposes.
2. Whether Kershner, having elected to be taxed on adjusted gross income under Section 400 of the Internal Revenue Code, could deduct certain business expenses.

**Holding**

1. Yes, Kershner was an employee because Metropolitan retained the right to direct the manner in which his business was conducted.
2. No, because having elected to be taxed under Section 400, Kershner was limited

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to the standard deduction and could not separately deduct business expenses not covered under Section 22(n) of the Internal Revenue Code.

**Court's Reasoning**

The court distinguished between an employee and an independent contractor, stating that an employee is subject to the employer's control over the manner in which the work is performed, while an independent contractor is subject to control only as to the result of the work. The court found that Metropolitan exercised sufficient control over Kershner, including supervising his work, requiring him to follow company rules, and holding him responsible to the office manager. Therefore, Kershner was deemed an employee.

Regarding the deductions, the court noted that Kershner elected to be taxed under Section 400, making that election irrevocable. Section 22(n) of the Code defines adjusted gross income and limits the deductions available to employees. The court found that the expenses Kershner claimed did not fall within the allowable deductions for travel, meals, and lodging while away from home, or for reimbursed expenses. The court cited *Commissioner v. Flowers, 326 U.S. 465*, stating that a taxpayer's home means his place of business or employment, and since Kershner's expenses were primarily incurred within Martinsburg, they were not incurred "away from home." Furthermore, there was no evidence of a reimbursement arrangement with Metropolitan.

**Practical Implications**

This case clarifies the distinction between an employee and an independent contractor in the context of income tax deductions. It highlights the importance of the degree of control an employer exercises over a worker in determining their status. The case also underscores the binding nature of the election to be taxed on adjusted gross income using the standard deduction, preventing taxpayers from claiming itemized deductions. It serves as a reminder that employees seeking to deduct business expenses must meet the specific requirements outlined in Section 22(n) of the Internal Revenue Code, including demonstrating that expenses were incurred while away from home and were not reimbursed by the employer. Later cases often cite this case to differentiate employee versus independent contractor status, especially in industries like insurance sales.

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