19 T.C. 23 (1952)

A deduction for contributions to an employee pension trust accrues in the tax year when the liability to make the payment becomes fixed and determinable, not merely when a resolution to establish a trust is adopted.

Summary

Abingdon Potteries sought to deduct a contribution to an employee pension trust for the 1944 tax year, based on a resolution passed in December 1944. However, the trust was not actually established until January 1945, and the payment was made in February 1945. The Tax Court held that the deduction could not be taken in 1944 because the liability to make the payment did not accrue until 1945. Section 23(p)(1)(E) of the Internal Revenue Code allows a deduction in the prior year if payment is made within 60 days of the close of the earlier year, but only if the payment was properly accruable in that earlier year.

Facts

Abingdon Potteries' board of directors passed a resolution on December 28, 1944, to establish a pension trust for its employees, authorizing a contribution of up to $25,000. No trust instrument was attached to the resolution, though a specimen agreement was reviewed. The trust was not actually created until January 26, 1945, and trustees were appointed the day before. The company contributed $23,500 to the trust in February 1945. Employees were notified of the plan on January 30, 1945, and their assent was required for participation.

Procedural History

Abingdon Potteries deducted the $23,500 contribution on its 1944 tax return. The Commissioner of Internal Revenue disallowed the deduction. Abingdon Potteries then petitioned the Tax Court for review of the deficiency determination.

Issue(s)

Whether Abingdon Potteries, an accrual basis taxpayer, could deduct a contribution to an employee pension trust for the 1944 tax year, when the trust was not established and the payment was not made until 1945.

Holding

No, because the liability for the payment did not accrue in 1944. The resolution to establish a trust was not enough to create a fixed and determinable liability, as the company could have abandoned the plan before the trust was actually established.

Court's Reasoning

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The court reasoned that generally, deductions for contributions to employee pension trusts can only be taken in the year the payment is made, regardless of whether the taxpayer is on a cash or accrual basis. While Section 23(p)(1)(E) of the Internal Revenue Code creates an exception, allowing accrual basis taxpayers to deduct payments made within 60 days after the close of the taxable year, this exception only applies if the liability was properly accruable in that earlier year. The court found that the liability was not properly accruable in 1944 because the trust did not exist until 1945. The court emphasized that all that happened in 1944 was "a unilateral determination by petitioner to create a trust in the future and to make a contribution to such trust."

Practical Implications

This case clarifies that a mere resolution to establish a pension trust is insufficient to create an accruable liability for tax deduction purposes. Taxpayers must ensure that all necessary steps to establish the trust, such as executing a trust instrument and appointing trustees, are completed before the end of the tax year for which the deduction is claimed, or within the 60-day grace period provided the liability was otherwise fixed. This case underscores the importance of proper documentation and timing when establishing and contributing to employee benefit plans, impacting tax planning for businesses. Later cases distinguish this ruling by focusing on whether a definitive and binding agreement existed in the earlier tax year.

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