26 T.C. 981 (1956)

Subsistence allowances paid to state patrolmen are considered additional compensation and are includible in gross income for tax purposes, even if the patrolman is required to be on call at all times.

Summary

The United States Tax Court addressed whether a subsistence allowance received by a Georgia State Patrolman constituted taxable income. The patrolman received a per diem allowance for meals, regardless of whether he was on duty. The court held that the allowance was additional compensation under Section 22(a) of the 1939 Code, rejecting the argument that it was provided for the convenience of the employer. The court distinguished this case from situations where the employer directly provides meals, emphasizing that the patrolman had freedom in choosing restaurants and eating times. The decision underscores the broad definition of income and the limited application of the convenience of the employer doctrine.

Facts

Harold Brannon Magness, a Georgia State Patrolman, received a regular salary plus a per diem subsistence allowance of $4.50. He was required to live in barracks and was subject to call 24/7, except for one day off a week and a two-week vacation. The subsistence allowance was intended to cover the cost of his meals, which he purchased at public restaurants of his choice. Magness did not report the subsistence allowance as income on his tax return. The Commissioner of Internal Revenue determined that the allowance was taxable income.

Procedural History

The Commissioner issued a deficiency notice, determining that the subsistence allowance was additional taxable compensation. Magness challenged this determination in the United States Tax Court.

Issue(s)

Whether the subsistence allowance received by the state patrolman constituted additional compensation under Section 22(a) of the 1939 Code.

Holding

Yes, because the subsistence allowance received by the petitioner was additional compensation, not provided for the convenience of the employer, and was therefore taxable.

Court’s Reasoning

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The court relied on the broad language of Section 22(a) of the 1939 Code, which defines gross income to include all income from whatever source derived. The court noted that the Supreme Court has consistently interpreted this section broadly. The court found that the subsistence allowance was an economic benefit conferred on the employee as compensation. The court distinguished this case from situations where the employer directly provides meals for its convenience, emphasizing that Magness was free to choose where and when he ate. The court cited its previous decisions in which subsistence allowances were deemed taxable. The court rejected the argument that the allowance was provided for the convenience of the employer, stating that if the employer could designate any part of an employee's salary as subsistence, it would create a tax loophole. The court also stated that the cost of meals is a personal expense.

The court referenced Regulations 111, Section 29.22(a)-3, which stated that if an employee receives living quarters or meals in addition to salary, the value of those benefits constitutes income. An exception applies if the quarters or meals are furnished for the convenience of the employer. However, the Court distinguished this case since meals were not furnished by the state; the petitioner received a per diem allowance.

Practical Implications

This case clarifies the taxability of allowances provided to employees for meals, particularly in situations where employees have discretion over their meal choices. The case reinforces the general principle that economic benefits, including allowances, are taxable income. Attorneys should advise clients, particularly government employees, on the tax implications of per diem allowances and the importance of properly reporting such income. This case emphasizes the limited scope of the "convenience of the employer" exception, requiring that the employer's convenience be the primary reason for providing the benefit, not merely an incidental result. The case highlights that the IRS will scrutinize arrangements where employers designate a portion of an employee's regular compensation as non-taxable subsistence.

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