Peurifoy v. Commissioner, T.C. Memo. 1958-6

For purposes of deducting travel expenses while 'away from home' under Internal Revenue Code Section 162(a)(2), employment expected to last for a substantial or indefinite period is not considered 'temporary', even if the taxpayer maintains a residence elsewhere.

Summary

The Tax Court disallowed a boilermaker's deductions for living expenses in Rome, Georgia, where he worked for nearly two years, finding his employment 'indefinite' rather than 'temporary.' Peurifoy argued his job was temporary because his union could have reassigned him. The court distinguished this case from prior rulings where employments were clearly temporary and held that employment expected to last for a considerable or indefinite period at a specific location constitutes the taxpayer's 'home' for tax purposes, thus precluding deductions for living expenses at that location.

Facts

Petitioner, a boilermaker, worked on several temporary jobs away from home in early 1953. He then accepted employment with Babcock & Wilcox in Rome, Georgia, to install boilers for Georgia Power Company. This was the largest job he had ever undertaken, and he anticipated it would last one to two years. He worked in Rome from April 27, 1953, to April 22, 1955, with two brief strike-related interruptions. He deducted $5 per day for meals and lodging in Rome, which the Commissioner disallowed, arguing Rome was his 'post of duty'.

Procedural History

The Commissioner of Internal Revenue disallowed a portion of Peurifoy's claimed deductions for 'Board & Lodging away from home.' Peurifoy petitioned the Tax Court to contest the deficiency determination.

Issue(s)

1. Whether the petitioner's employment in Rome, Georgia, with Babcock & Wilcox was 'temporary' within the meaning of Internal Revenue Code Section 162(a)(2), allowing him to deduct expenses for meals and lodging while 'away from home'.

Holding

1. No, because the petitioner's employment in Rome was 'indefinite' in duration, not 'temporary', despite the possibility of union reassignment.

Court's Reasoning

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The court distinguished this case from *Schurer* and *Leach*, where employments were clearly temporary with taxpayers returning home between short-term jobs. Here, Peurifoy's Rome job lasted nearly two years and was expected to be of considerable duration. The court emphasized the difference between 'indefinite' and 'temporary' employment, citing *Beatrice H. Albert*, which denied deductions for 'indefinite' employment, even without permanence. The court stated, "The employment * * * lacked permanence, but, on the other hand, was indefinite in duration rather than obviously temporary, in that it was not the sort of employment in which termination within a short period could be foreseen…" While Peurifoy argued union reassignment made his job temporary, the court noted the union did not reassign him, and he worked in Rome for a substantial period. The court concluded, "Under these facts, we do not think petitioner's employment at the Rome, Georgia, job in 1953 and 1954 can be characterized as 'temporary'."

Practical Implications

Peurifoy clarifies the distinction between 'temporary' and 'indefinite' employment for travel expense deductions. Taxpayers accepting employment at a specific location expected to last a substantial or indefinite period, even if not permanent, will likely be considered to have established their 'tax home' there. This case highlights that the anticipated duration of employment at a location, not just the existence of a permanent residence elsewhere or the possibility of job termination, is crucial in determining deductibility of living expenses under Section 162(a)(2). Later cases applying *Peurifoy* often focus on the expected or actual duration of the employment to determine if it qualifies as 'temporary' for tax deduction purposes.

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