32 T.C. 1368 (1959)

An employee's "home" for purposes of deducting travel expenses is generally their principal place of employment, and if the employment at a location is indefinite rather than temporary, expenses for meals and lodging there are not deductible.

Summary

The case concerns a radio technician, John Harvey, employed by Douglas Aircraft, who received a per diem allowance while working at the Edwards Air Force Base. The central issue was whether this allowance constituted taxable income or deductible travel expenses "while away from home." The Tax Court held the allowance was income, as Harvey's principal place of employment shifted to Edwards, making his expenses there nondeductible. The court applied the principles of *Commissioner v. Flowers*, focusing on whether the expenses were incurred "while away from home" in pursuit of business and whether the work assignment was temporary. Because Harvey's work at Edwards was considered indefinite, the per diem was deemed additional compensation, not a deductible travel expense.

Facts

John Harvey, a radio technician for Douglas Aircraft, worked at the Edwards Air Force Base from December 15, 1952, to the end of January 1954, receiving a $7 per day allowance. Harvey was transferred to the Santa Monica plant of Douglas Aircraft in November 1952 and shortly thereafter was assigned to work at Edwards. Douglas paid this per diem, classified the assignments as "temporary," and did not withhold taxes on the allowance. Harvey's family moved to Lancaster near Edwards in October 1953. The IRS assessed a deficiency, arguing the allowance was taxable income. Harvey claimed the payments were deductible travel expenses.

Procedural History

The Commissioner determined a tax deficiency, disallowing Harvey's deduction of the per diem as travel expenses. The Tax Court ruled in favor of the Commissioner, holding that the per diem payments constituted additional compensation.

Issue(s)

1. Whether the $7 per diem allowance received by Harvey constitutes taxable income under Section 22(a) of the 1939 Code?

2. Whether the per diem allowance can be deducted as "traveling expenses while away from home" under Sections 23(a)(1)(A) and 22(n)(2) of the 1939 Code?

Holding

1. Yes, because the per diem payments were considered additional compensation for

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services provided by Harvey.

2. No, because Edwards Air Force Base became Harvey's principal place of employment, thus expenses for meals and lodging there were not considered "traveling expenses while away from home."

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