Mais v. Commissioner, 51 T. C. 494 (1968)

Embezzled funds are taxable income to the embezzler in the year received, with deductions allowed only for amounts repaid in the year of repayment.

Summary

In Mais v. Commissioner, the U. S. Tax Court ruled that embezzled funds are taxable income to the embezzler in the year they are received, as per the precedent set in James v. United States. Norman Mais embezzled securities, sold them, and received proceeds in 1960. He confessed and returned part of the funds that year, but the court held that only the returned amount could be deducted from his income for 1960. The court emphasized that the embezzler's acknowledgment of an obligation to repay does not negate the income; only actual repayment in the same year allows for a deduction.

Facts

Norman Mais, employed as a stock transfer clerk at Bache & Co. , embezzled securities in 1960. He sold these securities and received $28,557. 40. Mais invested part of the proceeds in other securities, gave some to his brother-in-law to hold, and spent the remainder on personal expenses. Bache discovered the embezzlement in June 1960, and Mais confessed, turning over $10,700 to the New York police for restitution. Securities worth between $6,000 and $7,000 were retained by his brother-in-law until sold in 1961, with proceeds used for restitution in 1962.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Mais's 1960 income tax, including the embezzled funds as income, less the $10,700 returned that year. Mais petitioned the U. S. Tax Court for relief, arguing that none of the embezzled funds should be considered income for 1960. The Tax Court upheld the Commissioner's determination.

Issue(s)

1. Whether the portion of embezzled funds not repaid during the year of embezzlement is taxable income to the embezzler in that year.

Holding

1. Yes, because the embezzled funds constituted taxable income in the year received, and only actual repayments in that year could be deducted from income, as established by James v. United States.

Court's Reasoning

© 2025 SCOTUSreports.com. All rights reserved.

The Tax Court applied the principle from James v. United States, which held that embezzled funds are taxable income in the year received, regardless of the embezzler's obligation to repay. The court distinguished between embezzled funds and loans, noting that embezzled funds are not received under any consensual agreement to repay. The court rejected Mais's argument that his acknowledgment of the obligation to repay negated the income, emphasizing that only actual repayment in the same year allows for a deduction. The court also clarified that the increase in value of the securities held by Mais's brother-in-law until 1961 did not affect the taxability of the embezzled funds in 1960. The court's decision aligned with Revenue Ruling 65-254, which allows deductions for embezzled funds repaid in the year of repayment.

Practical Implications

This decision clarifies that embezzlers must report embezzled funds as income in the year received, with deductions available only for amounts repaid in the same year. This ruling impacts how embezzlement cases are analyzed for tax purposes, emphasizing the importance of timely restitution to mitigate tax liabilities. It reinforces the principle that tax law treats embezzlers similarly to honest taxpayers who mistakenly receive income, requiring both to report income and claim deductions in the appropriate years. The decision also influences legal practice by guiding attorneys on advising clients involved in embezzlement on tax implications and strategies for minimizing tax liabilities through timely repayments.

© 2025 SCOTUSreports.com. All rights reserved.