Primuth v. Commissioner, 54 T. C. 374, 1970 U. S. Tax Ct. LEXIS 199 (U. S. Tax Court 1970)

Fees paid to employment agencies for securing new employment are deductible as ordinary and necessary business expenses under section 162 of the Internal Revenue Code.

Summary

David Primuth, employed as a corporate executive, paid a fee to Frederick Chusid & Co. to secure new employment, which resulted in a position at Symons Manufacturing Co. The IRS disallowed the deduction of this fee, but the Tax Court held that it was an ordinary and necessary business expense under section 162 of the Internal Revenue Code. The court reasoned that Primuth was in the business of being a corporate executive and that the fee was directly related to continuing that business with a new employer. This decision established that employment agency fees for securing similar employment are deductible, impacting how employees and their tax advisors approach such expenses.

Facts

David Primuth was employed as the secretary-treasurer at Foundry Allied Industries, Inc. , with a base salary of approximately $22,000 per annum and total compensation around $30,000. Dissatisfied with his future at Foundry, Primuth contacted Frederick Chusid & Co. in May 1966 to find new employment. He signed a contract with Chusid on October 11, 1966, agreeing to pay a fee of $2,775, which he paid in full by November 5, 1966. Chusid’s services included career counseling, resume preparation, and job placement efforts, which led to Primuth securing a position as controller and assistant to the vice president of finance at Symons Manufacturing Co. in May 1967. Primuth deducted the fee and related expenses on his 1966 tax return, but the IRS disallowed the deduction.

Procedural History

The IRS issued a notice of deficiency on June 11, 1968, disallowing the deduction of $3,016. 43 as an employment agency fee. Primuth petitioned the U. S. Tax Court, which held a trial and subsequently issued an opinion on March 2, 1970, allowing the deduction as an ordinary and necessary business expense under section 162 of the Internal Revenue Code.

Issue(s)

1. Whether the fee paid to Frederick Chusid & Co. for securing new employment is deductible as an ordinary and necessary business expense under section 162 of the Internal Revenue Code.

Holding

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1. Yes, because the fee was incurred in carrying on Primuth's trade or business of being a corporate executive, and it directly resulted in securing new employment in the same field.

Court's Reasoning

The court reasoned that Primuth was in the trade or business of being a corporate executive, and the fee paid to Chusid was an ordinary and necessary expense for continuing that business with a new employer. The court distinguished this case from others where expenses were denied because they were related to seeking new employment rather than securing it. The court applied the principle that an employee can retain their business status even while temporarily between employers, citing cases like *Harold Haft* and *Furner v. Commissioner*. The court also rejected the IRS's arguments that the fee was not deductible because Chusid was not a licensed employment agency and the fee was payable regardless of securing employment. The court emphasized the direct relationship between the fee and the new employment, and the lack of personal or capital nature to the expense.

Practical Implications

This decision established that fees paid to employment agencies for securing new employment in the same field are deductible as business expenses. It impacts how employees and tax professionals analyze similar expenses, potentially increasing the number of such deductions claimed. The ruling may encourage more frequent job changes among employees, as the financial barrier of employment agency fees is reduced. It also influences the IRS's approach to such deductions, as seen in subsequent revenue rulings and regulations. Later cases like *Ellwein v. United States* have applied this principle, affirming its relevance in tax law.

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