Gilberg v. Commissioner, 55 T. C. 611 (1971)

Commuting expenses are not deductible as business expenses unless the employee would not have driven but for the necessity of carrying heavy and bulky tools or materials that cannot be carried on public transportation.

Summary

Harold Gilberg, a Defense Department auditor, sought to deduct unreimbursed automobile expenses incurred while traveling from his home in Marblehead, Massachusetts, to various temporary audit sites. The Tax Court held that these expenses were not deductible under Section 162 of the Internal Revenue Code because they were commuting expenses arising from Gilberg's personal choice of residence, not business necessity. Furthermore, the court ruled that the necessity of carrying audit materials did not justify a deduction since they could be transported via public means and did not necessitate driving. This case reinforces the principle that commuting costs are personal and nondeductible unless they meet stringent criteria related to the transportation of work-related items.

Facts

Harold Gilberg was employed as a mobile auditor for the U. S. Defense Department, with assignments across New England. In 1965, his permanent duty stations were in Waltham and later Boston, but he resided in Marblehead. Gilberg drove to various temporary audit locations from Marblehead, incurring unreimbursed expenses because his travel distances were longer than if he had started from his official duty stations. His employer reimbursed travel within 50 miles one way from the permanent duty station or residence, whichever was closer. Gilberg also had to carry audit materials, including briefcases and manuals, to and from these sites.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Gilberg's 1965 federal income tax and disallowed the deduction for his unreimbursed automobile expenses. Gilberg petitioned the U. S. Tax Court for a redetermination of the deficiency. The court heard the case and issued its decision on January 7, 1971, ruling in favor of the Commissioner.

Issue(s)

1. Whether Gilberg's unreimbursed automobile expenses incurred in traveling between his residence and temporary duty stations in Massachusetts are deductible under Section 162 of the Internal Revenue Code as ordinary and necessary business expenses?
2. Whether the necessity of carrying audit materials justified a deduction for any part of Gilberg's commuting expenses?

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Holding

1. No, because the expenses were commuting costs resulting from Gilberg's personal choice of residence and not a business necessity.
2. No, because the audit materials were not so heavy or bulky as to necessitate driving and could have been transported via public means.

Court's Reasoning

The Tax Court applied the long-standing rule that commuting expenses are nondeductible personal expenses, as outlined in Section 1. 162-2 of the Treasury Regulations. The court found that Gilberg's choice to live in Marblehead, rather than closer to his work assignments, was a personal decision, and thus, his travel expenses were personal commuting costs, not business expenses. Regarding the audit materials, the court rejected the argument that carrying them justified a deduction. It distinguished this case from others where tools were so heavy and bulky that they could not be transported via public means, stating that Gilberg's materials could have been carried on public transportation. The court also clarified that any exception to the commuting rule should be limited to situations where the employee must drive due to the impracticality of using public transportation for their tools or materials.

Practical Implications

This decision reinforces the strict interpretation of commuting expenses under Section 162, impacting how taxpayers and tax professionals approach deductions for travel costs. Practitioners should advise clients that only in rare circumstances, where heavy and bulky work-related items must be transported, can commuting expenses be deductible. This ruling affects employees who might consider deductions for travel to work, particularly those carrying work materials. It also underscores the importance of the location of one's residence in relation to work assignments. Subsequent cases have generally followed this precedent, though some courts have applied a 'but for' test or allowed partial deductions under specific conditions. Tax professionals must carefully evaluate each case against these criteria to assess the deductibility of travel expenses.

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