Giesinger v. Commissioner, 61 T. C. 451 (1974)

Lodging provided to an employee can be excluded from gross income if it is on the employer's business premises, for the employer's convenience, and a condition of employment.

Summary

In Giesinger v. Commissioner, the Tax Court ruled that the fair rental value of lodging provided to Harald Giesinger by his employer, Restaurant Corp. of America, Inc. , was excludable from his gross income under Section 119 of the Internal Revenue Code. Giesinger, the chief operating officer, lived in an apartment within the Watergate complex, where he was required to be available 24/7 to manage food and beverage services across the entire project. The court held that the apartment was on the business premises, necessary for Giesinger to perform his duties, and a condition of his employment, thus meeting all criteria for exclusion under Section 119.

Facts

Harald T. Giesinger was the chairman of the board and chief operating officer of Restaurant Corp. of America, Inc. (RCA), which operated food and beverage services within the Watergate complex in Washington, D. C. RCA leased commercial space in the Watergate East Apartment Building, where it operated a restaurant, pastry shop, cafe, and poolside snack bar. RCA's board resolved that one director should live within the complex to ensure close contact with operations. Giesinger, who was responsible for setting up and overseeing RCA's operations, lived in apartment 402S in Watergate East, which was almost directly above the restaurant and pastry shop. He was on call 24/7, frequently dealing with emergencies and supervising operations.

Procedural History

The Commissioner of Internal Revenue determined a deficiency in Giesinger's 1970 federal income tax, asserting that the fair rental value of his lodging should be included in his gross income. Giesinger petitioned the Tax Court for a redetermination, arguing that the lodging was excludable under Section 119 of the Internal Revenue Code. The Tax Court, in a majority opinion, ruled in favor of Giesinger, holding that the lodging met all three requirements for exclusion under Section 119.

Issue(s)

1. Whether the lodging provided to Giesinger was on the business premises of his employer?
2. Whether the lodging was furnished for the convenience of the employer?
3. Whether Giesinger was required to accept the lodging as a condition of his

© 2025 SCOTUSreports.com. All rights reserved.

employment?

Holding

1. Yes, because the Watergate complex was a unified project and Giesinger's apartment was physically connected to and almost directly above RCA's operational facilities.
2. Yes, because Giesinger's 24/7 availability was necessary for RCA to maintain food and beverage services throughout the complex.
3. Yes, because Giesinger's presence in the complex was required to properly perform his duties, as evidenced by RCA's board resolution and his actual responsibilities.

Court's Reasoning

The court applied the three-part test from Section 119 and related regulations to determine if Giesinger's lodging was excludable from gross income. The court found that the Watergate complex constituted a single business premises due to its interconnected nature and Giesinger's responsibilities across the entire project. The court cited Jack B. Lindeman, 60 T. C. 609 (1973), to support its conclusion that Giesinger's apartment was on the business premises. The court also determined that the lodging was for the employer's convenience, as Giesinger's proximity enabled quick response to emergencies and supervision of night personnel. Finally, the court found that Giesinger was required to accept the lodging as a condition of employment, given the board's resolution and his actual duties. The court emphasized that the "condition of employment" and "convenience of the employer" tests were substantially similar under the facts presented.

Practical Implications

Giesinger v. Commissioner clarifies the application of Section 119 to employees required to live on or near their employer's business premises for job-related reasons. Attorneys and tax professionals should analyze similar cases by assessing whether the employee's lodging is necessary for the proper performance of duties, especially in integrated or multi-building projects. The decision suggests that employers can structure employment arrangements to provide tax-free lodging benefits if the criteria are met. Subsequent cases have applied Giesinger's reasoning to various contexts, such as hotel managers and security personnel, but have also distinguished it where the employee's presence was not deemed essential to the job. The case underscores the importance of factual analysis in determining the tax treatment of employee lodging.

© 2025 SCOTUSreports.com. All rights reserved.