Norwood v. Commissioner, 66 T.C. 467 (1976)

For the purpose of deducting daily commuting expenses to a job site, employment is considered temporary if its termination can be foreseen within a reasonably short period of time; conversely, employment is indefinite if it is realistically expected to last for a substantial or indeterminate duration.

Summary

Lawrence Norwood, a steamfitter, lived near Washington, D.C. and was dispatched by his union to a job site in Lusby, Maryland due to a local work shortage. He drove daily from his home to Lusby. His initial assignment was expected to last six months, but he received subsequent assignments at the same location, extending his employment beyond two years. The Tax Court addressed whether Norwood's daily commuting expenses to Lusby were deductible as business expenses. The court held that his initial assignment was temporary, allowing deduction of commuting expenses for that period, but his subsequent continued employment transformed the job to indefinite, thus disallowing deductions for the later period.

Facts

Lawrence Norwood, a steamfitter and member of a Washington, D.C. union since 1964, was sent to a job site in Lusby, Maryland in October 1971 due to a work shortage in D.C.
His first assignment at the Calvert Cliffs Atomic Energy Plant in Lusby was expected to last about six months.
Instead of being laid off after his initial assignment, Norwood was asked to stay on as a foreman, a role expected to last nine months.
He continued to receive subsequent assignments at the same Lusby site, working as an instrument fitter, welder, and union shop steward until December 1974, when he was injured.
Throughout this period, Norwood maintained his family home in Adelphi, Maryland, and commuted daily to Lusby, receiving a standard travel allowance from his employer.
He deducted automobile expenses for commuting in 1972 and 1973.

Procedural History

The Commissioner of Internal Revenue determined deficiencies in Norwood's federal income taxes for 1972 and 1973, disallowing the deduction of daily commuting expenses.
Norwood petitioned the Tax Court to contest the Commissioner's determination.

Issue(s)

1. Whether Lawrence Norwood's employment in Lusby, Maryland was "temporary" or "indefinite" for the purpose of determining the deductibility of

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daily commuting expenses under Section 162(a) of the Internal Revenue Code.

Holding

1. Yes, in part and No, in part. The Tax Court held that Norwood's employment in Lusby was temporary during his initial assignment (October 1971 to March 1972), because at its inception, it was expected to last only a short period. However, it became indefinite after he accepted the foreman position in March 1972, because at that point, his continued employment for a substantial period became reasonably foreseeable.

Court's Reasoning

The court relied on the established distinction between "temporary" and "indefinite" employment to determine the deductibility of commuting expenses. The court stated, "Where employment is temporary, some otherwise personal expenses connected with such employment may be considered to arise from the exigencies of business and not from the taxpayer's personal choice to live at a distance from his work." Citing *Truman C. Tucker, 55 T.C. 783, 786 (1971)*, the court defined temporary employment as that which "can be expected to last for only a short period of time."

The court found Norwood's initial assignment to be temporary because it was expected to last only six months. However, the court emphasized that "[e]ven if it is known that a particular job may or will terminate at some future date, that job is not temporary if it is expected to last for a substantial or indefinite period of time." Citing *Ford v. Commissioner, 227 F.2d 297 (4th Cir. 1955)*.

The court reasoned that when Norwood accepted the foreman position, his expectation of employment changed. At that point, he could reasonably expect continued employment for a substantial period on the large Calvert Cliffs project. The court noted, "This substantial actual duration is an additional persuasive reason for concluding that petitioner's employment with Bechtel was 'indeterminate in fact as it [developed],'… without regard to the fact that it consisted of a series of shorter assignments." Citing *Commissioner v. Peurifoy, 254 F.2d 483, 486 (4th Cir. 1957)*.

The court concluded that while the initial commute was deductible due to the temporary nature of the first job, the subsequent commuting expenses were not deductible because the employment became indefinite after Norwood accepted the foreman position.

Practical Implications

Norwood v. Commissioner clarifies the distinction between temporary and indefinite employment in the context of commuting expense deductions. It highlights that the determination of whether employment is temporary or indefinite is not solely based on the taxpayer's subjective expectations or the initial anticipated duration of a job.

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Instead, courts will objectively assess the circumstances at the point in time when the nature of employment is being evaluated.

This case emphasizes that initially temporary employment can evolve into indefinite employment due to changed circumstances, such as accepting subsequent assignments or extensions at the same location. Taxpayers and practitioners must consider the realistic expectation of continued employment at a location, not just the initial job duration, when determining the deductibility of commuting expenses. The case serves as a reminder that prolonged employment at a single location, even through a series of short-term assignments, can be deemed indefinite for tax purposes, thus disallowing commuting expense deductions.

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