Pollei v. Commissioner, 87 T. C. 869 (1986)

Commuting expenses between home and work are not deductible, even if the employee is considered ‘on duty’ during the commute.

Summary

In Pollei v. Commissioner, police captains Jon R. Pollei and Harry W. Patrick sought to deduct vehicle operating costs for travel between their homes and police headquarters, arguing that they were ‘on duty’ during these commutes due to a police department policy. The Tax Court ruled against them, holding that commuting remains a nondeductible personal expense under IRC sections 162 and 262. The court emphasized that the police department’s designation of the commute as part of the officers’ ‘tour of duty’ did not alter its nondeductible nature. This decision reinforces the principle that commuting expenses are personal, regardless of job-related activities or on-duty status during the commute.

Facts

Jon R. Pollei and Harry W. Patrick were police captains in the Salt Lake City Police Department, receiving a monthly car allowance to use their personally owned, specially equipped vehicles for police duties. In 1980, the department implemented a cost-saving measure requiring command officers to provide their own transportation, but continued to equip these vehicles for police use. The officers were required to be in radio contact with headquarters during their commute, which the department considered part of their ‘tour of duty. ‘ The officers claimed deductions for vehicle operating costs, but the IRS disallowed the portion related to commuting between home and headquarters.

Procedural History

The IRS determined deficiencies in the officers’ 1981 federal income taxes due to the disallowed commuting expense deductions. The officers petitioned the U. S. Tax Court for a redetermination of these deficiencies. The cases were consolidated for trial, briefing, and opinion, resulting in the Tax Court’s decision in favor of the Commissioner.

Issue(s)

1. Whether police officers can deduct the cost of operating an unmarked police vehicle between their residence and police headquarters when they are considered ‘on duty’ during this commute.

Holding

1. No, because commuting expenses remain nondeductible personal expenses under IRC sections 162 and 262, regardless of the officers’ ‘on-duty’ status during the

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commute.

Court’s Reasoning

The court applied the well-established rule that commuting expenses are personal and nondeductible, citing Commissioner v. Flowers and other precedents. The court rejected the officers’ argument that their ‘on-duty’ status during the commute transformed it into a deductible business expense. The court noted that the officers’ responsibilities during the commute were no different than during personal use of the vehicle. The court also distinguished this case from others where deductions were allowed for travel between job sites or while away from home, emphasizing that commuting to a single work location remains nondeductible. The court quoted from Moss v. Commissioner, stating that commuting is ‘so inherently personal that it cannot qualify for deductibility, irrespective of its role in the taxpayer’s trade or business. ‘ The court also addressed the officers’ reference to 1984 legislation on fringe benefits, clarifying that the excludability of a fringe benefit does not imply that the related expense would have been deductible.

Practical Implications

This decision reinforces the principle that commuting expenses are personal and nondeductible, even in unique circumstances where employees are considered ‘on duty’ during their commute. Legal practitioners should advise clients in similar situations that the nature of their job or employer policies designating them as ‘on duty’ during commuting will not support a deduction claim. This ruling may impact police departments and other employers who consider employees to be on duty during their commute, as they cannot rely on such designations to support employee tax deductions. Subsequent cases, such as McCabe v. Commissioner, have continued to apply this principle, denying deductions for commuting expenses even when the employee is required to be available for work-related calls during the commute.

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