***Minahan v. Commissioner*, 88 T.C. 492 (1987)**

An attorney who is also a petitioner and holds an equity interest in the law firm representing the petitioners is not entitled to an award of attorney's fees as part of litigation costs under Section 7430 of the Internal Revenue Code, because such fees are not considered 'paid or incurred' for the services of an attorney.

Summary

Several petitioners, including attorney Roger C. Minahan, successfully challenged gift tax deficiencies assessed by the IRS and sought to recover litigation costs under Section 7430 of the Internal Revenue Code. Roger C. Minahan, an attorney and petitioner, was also a senior stockholder in the law firm representing all petitioners. The Tax Court considered whether Minahan, as both petitioner and attorney, could recover attorney's fees for his work as part of the litigation costs. The court held that because Minahan had an equity interest in the law firm, his payment to the firm was essentially payment to himself, and therefore, the fees were not truly 'paid or incurred' as required by Section 7430. Thus, attorney's fees for his services were disallowed as litigation costs.

Facts

Several individuals and estates (petitioners) were assessed gift tax deficiencies by the IRS for the calendar quarter ended September 30, 1981.

The petitioners engaged a law firm to represent them in Tax Court proceedings to challenge these deficiencies.

Petitioner Roger C. Minahan was not only a petitioner in his own case but also a senior stockholder and president of the law firm representing all petitioners.

Minahan worked 102.5 hours on the case, billed at his firm's rate of $150 per hour.

Minahan was responsible for 11.8% of the law firm's monthly bills, which he paid.

The petitioners ultimately reached a stipulated decision with the IRS, resulting in no deficiencies owed.

Petitioners then moved for litigation costs under Section 7430, including attorney's fees for the law firm's services, including Minahan's.

Procedural History

The Tax Court initially held that the petitioners were entitled to litigation costs in *Minahan v. Commissioner*, 88 T.C. 492 (1987).

The current opinion addresses the specific issue of whether attorney Roger C.

Minahan, as a petitioner and equity holder in the representing law firm, can recover attorney's fees for his services as part of those litigation costs.

Issue(s)

1. Whether petitioner Roger C. Minahan, an attorney with an equity interest in the law firm representing the petitioners, is entitled to recover attorney's fees for his services as part of 'reasonable litigation costs' under Section 7430(c)(1)(A)(iv) of the Internal Revenue Code.

Holding

1. No, because attorney Minahan's payment to his own law firm, in which he holds an equity interest, is not considered a fee 'paid or incurred for the services of attorneys' within the meaning of Section 7430(c)(1)(A)(iv).

Court's Reasoning

The court relied on the definition of 'reasonable litigation costs' in Section 7430(c)(1)(A)(iv), which includes 'reasonable fees paid or incurred for the services of attorneys.'

Referencing its prior decision in *Frisch v. Commissioner*, 87 T.C. 838 (1986), the court reiterated that Section 7430 focuses on fees 'actually incurred by a taxpayer in a civil proceeding.'

The court distinguished the current case from situations where fees are paid to an outside law firm. In Minahan's case, his equity interest in the firm meant that payment to the firm was, in effect, payment to himself.

The court stated, 'Attorney Minahan has an equity interest in the law firm such that payment to the law firm was in fact payment to himself and not a fee actually incurred.'

Even though Minahan made actual payments to the law firm, the court emphasized that the critical factor is 'to whom the payment was rendered.' Because of Minahan's equity interest, the payment lacked the arm's-length nature of fees truly 'incurred' for outside counsel.

Therefore, the court concluded that allowing attorney's fees for Minahan's services would be inconsistent with the intent of Section 7430, which is to compensate for costs genuinely incurred to outside parties in litigating against the IRS.

Practical Implications

This case clarifies that attorney-petitioners with an ownership stake in their representing law firm face limitations in recovering attorney's fees under Section

7430.

It establishes a distinction between fees paid to truly external counsel and payments within a firm where the attorney-petitioner has an equity interest.

Legal practitioners who are also petitioners in tax litigation and are represented by their own firms should be aware that their fees may not be fully recoverable as litigation costs if they have an ownership stake in the firm.

This decision emphasizes the ‘incurred’ aspect of attorney’s fees under Section 7430, requiring a genuine expense to an external party, not merely an internal allocation within a firm where the attorney is also a principal.

Subsequent cases would likely distinguish situations where an attorney-petitioner is merely an employee versus a partner or shareholder in the representing firm, potentially allowing fee recovery for employee-attorneys who do not have an equity interest.

