

Brizell v. Commissioner, 93 T.C. 151 (1989)

Payments made by a business to purchasing agents are deductible as ordinary and necessary business expenses under I.R.C. § 162(a) unless the payments are proven to be illegal bribes or kickbacks under state law; however, payments are not considered illegal bribes if made under duress (i.e., extortion).

Summary

Clarendon Press, a printing company, made payments to purchasing agents of various customers to secure business patronage. The IRS disallowed the deductions, claiming the payments were illegal bribes and therefore nondeductible under I.R.C. § 162(c)(2). The Tax Court, however, found that the payments, while potentially falling under the state law definition of commercial bribery, were actually made under extortion. The court emphasized that under New York law, the payments were not voluntary, and thus not bribes, since they were induced by the purchasing agents' threats of business loss, and ruled in favor of the taxpayers, holding that the payments were deductible business expenses under I.R.C. § 162(a).

Facts

Clarendon Press, a subchapter S corporation, made payments to purchasing agents of its customers from 1975 through 1979. The payments were reported on its tax returns as