Brizell v. Commissioner, 93 T. C. 159 (1989)

Payments to purchasing agents can be deductible as ordinary and necessary business expenses under IRC §162(a) if they are customary in the industry and made under duress, thus not constituting illegal bribes under IRC §162(c)(2).

Summary

In Brizell v. Commissioner, the Tax Court ruled that payments made by Clarendon Press, Inc. , to purchasing agents of its clients were deductible as ordinary and necessary business expenses. The court found that such payments were customary in the printing industry and necessary for Clarendon to maintain its business. Furthermore, the court determined that these payments were not illegal under New York's commercial bribery laws because they were made under duress, thus not qualifying as bribes under IRC §162(c)(2). This decision underscores the importance of industry practices and the legal context of payments when determining their deductibility.

Facts

Clarendon Press, Inc. , a subchapter S corporation, made payments to purchasing agents of its clients from 1975 through June 1979, which were mischaracterized as purchases on its tax returns. These payments were made to secure business from clients such as Estee Lauder and Standard Brands. The payments were made without the consent of the clients and were not for goods or services received. Clarendon's owners, Murray Brizell and Arnold Daniels, testified that the payments were demanded by the purchasing agents, who implied that business would be lost without them. Clarendon ceased payments after receiving grand jury subpoenas in 1980, and subsequently lost certain clients.

Procedural History

The Commissioner of Internal Revenue determined deficiencies and additions to tax for the petitioners, Murray and Harriet Brizell, and Arnold and Arline Daniels, for the tax years 1975 through 1979. The petitioners challenged these determinations in the U. S. Tax Court. After a trial, the court issued its opinion in 1989, ruling in favor of the petitioners.

Issue(s)

1. Whether the payments made by Clarendon to purchasing agents were deductible as ordinary and necessary business expenses under IRC §162(a).
2. Whether the payments were illegal bribes and therefore nondeductible under IRC §162(c)(2).

Holding

© 2025 SCOTUSreports.com. All rights reserved.

1. Yes, because the payments were customary in the printing industry and necessary to maintain Clarendon's business.
2. No, because the payments were made under duress and thus did not constitute illegal bribes under New York law.

Court's Reasoning

The court applied IRC §162(a), which allows deductions for ordinary and necessary business expenses. It found that the payments were ordinary based on testimony that such payments were common in the printing industry. The court also determined that the payments were necessary, as they helped maintain a significant portion of Clarendon's business. For the second issue, the court applied IRC §162(c)(2), which disallows deductions for illegal bribes. It held that the payments were not illegal under New York's commercial bribery statute because they were made under duress, constituting extortion rather than bribery. The court cited New York case law, such as People v. Dioguardi, to support its conclusion that extortion is a defense to bribery under New York law. The court also noted that the burden of proof under §162(c)(2) lies with the Commissioner, who failed to provide clear and convincing evidence of illegality.

Practical Implications

This decision has significant implications for businesses in industries where kickbacks are common. It suggests that payments to purchasing agents may be deductible if they are customary and made under duress. Legal practitioners advising clients in such industries should carefully document any coercion or industry norms to support the deductibility of such payments. The decision also highlights the importance of state law in determining the legality of payments, as different jurisdictions may treat similar conduct differently. Subsequent cases, such as United Title Insurance Co. v. Commissioner, have reinforced the principle that deductions should not be disallowed on public policy grounds unless specific statutory provisions apply.

© 2025 SCOTUSreports.com. All rights reserved.