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Action on Decision 1985-004

December 24, 1984

CHIEF COUNSEL:

Re: Walt E. and Dorothy M. Eller, et al. v. Commissioner

Docket Nos.: 3249-80 and 3250-80

Venue: C.A. 9

Decision: July 14, 1982

Opinion: 77 T.C. No. 66, 77 T.C. 934 (1981)

Tax, Year and Amount	Deficiency	
	Determined	Redetermined
Income, 1972	\$1,265.00	\$130.00
Income, 1973	\$20,183.00	\$12,418.00
Income, 1974	\$5,028.00	\$1,617.00

Issue:

Whether amounts paid to the three minor children of the individual petitioners constitute reasonable compensation for services actually rendered. 0162.07-01; 0162.07-02.

Discussion:

Petitioners owned and operated mobile home parks and participated in the sale of trailer homes. The Ellers have three children. In 1972 the children were 12 years old, 11 years old, and the youngest was 7. During the taxable periods involved herein each of the children performed a variety of services for the mobile homes parks. They performed these services on a continuing basis after school, on weekends, and during their summer vacation. The Court found that the services performed were necessary for the operation of the businesses. Their responsibilities included maintenance of the swimming pool, landscaping, and cleaning the park grounds. They also read the gas and electric meters, cleaned the recreation hall and the laundry rooms. They delivered messages to the tenants, answered telephones, and swept the trailer pads.

Compensation is deductible under section 162(a)(1) only if it is reasonable in amount, actually paid, and based on services actually rendered. See Treas. Reg. § 1.162-7(a). The fact that

payments are made to minor children by their parents does not preclude their deductibility. See Rev. Rul. 72-23, 1972-1 C.B. 43. The Service had argued that the amounts paid as compensation to the children were unreasonable. The Court determined that a majority of the amounts paid constituted reasonable compensation. The Judge considered the ages of the children and the experience of each child in relation to the other children. We cannot conclude that the Court's factual findings were clearly erroneous. Therefore, no appeal is recommended.

Recommendation:

Acquiescence.

CHERYL R. FRANK

Attorney

Approved: FRED T. GOLDBERG, Jr.

Chief Counsel

By: DAN HENRY LEE

Chief, Branch No. 1

Tax Litigation Division