



Appeal of Allan I. and Ivy L. Berr

The sole issue is whether respondent properly denied a deduction claimed for contributions to a union pension fund.

Mr. Berr (appellant) is a member of the Graphic Arts International Union. Membership in this union is necessary to appellant's continued employment. As a condition of his continued membership in the union, appellant is required to contribute a percentage of his earnings to the union's old age pension fund. If appellant terminates his union membership prior to retirement, he will be entitled to a return of 95 percent of the contributions. In all other events, appellant, his estate, or his designated beneficiaries will be entitled to a return of at least all of the contributions in the form of pension, disability, or death benefits.

Appellant deducted the pension fund contributions as business expenses on his California personal income tax return for 1977. On the basis of our determination in Appeal of Allan B. Crane, decided June 29, 1978, which involved pension fund contributions **to the** same union, respondent disallowed 95 percent of the claimed deduction. The 5 percent allowed constituted the portion of appellant's contributions which are forfeitable if he terminates union membership.

In this appeal appellant relies on the same authority which we rejected in Crane. (Rev. Rul. 54-190, 1954-1 Cum. Bull. 46; Internal Revenue Service Publication No. 529.) The revenue ruling provides that pension fund contributions required to be paid by union members are deductible where the members acquire no vested pension rights by virtue of the contributions. Publication No. 529 states that "[o]ld age pension fund **assessments** you pay to remain in the union and to hold a job are deductible."

In Crane we acknowledged that the courts have uniformly held that employee contributions to a pension fund constitute nondeductible personal expenses, rather than deductible business expenses, if the contributions purchase for the employee a vested interest in comparable future benefits or **if there** is a provision for the return of the contributions upon termination of union membership. Moreover, with respect to employee contributions to a union pension fund, the courts have held that such contributions are not deductible even though paid as a condition of continued union membership. Since the taxpayer's contributions to his union pension fund purchased for him a vested interest in future

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pension benefits equivalent in value to at least the value of the contributions or he was entitled to a return of 95 percent of the contributions upon termination of union membership, respondent's action in disallowing 95 percent of the claimed deduction was sustained.

We also concluded in Crane that the Revenue Ruling relied on by the taxpayer was not inconsistent with the controlling court decisions. In that ruling the Internal Revenue Service concluded that since the union member had no vested interest in any right to a pension the contributions were deductible as ordinary and necessary business expenses. (See Rev. Rul. 54-190, 1954-1 Cum. Bull. 46, 47.) A later ruling clarified the Service's position on the deductibility of union dues and assessments. Specifically, the Service has ruled that such items are deductible as business expenses only if they are used to meet the expenses of labor union activities. If the dues or assessments are used to defray the cost of providing the union members with personal benefits such as death benefits, they constitute nondeductible personal expenses. (Rev. Rul. 72-463, 1972-2 Cum. Bull. 93.)

Finally, in view of the later court decisions and rulings, we rejected the general statement in Internal Revenue Service Publication No. 529 relied on by the taxpayer in Crane as too broad.

In this appeal appellant has relied on the same arguments to support the questioned deduction that were rejected in the Crane appeal. Therefore, for the reasons set forth in the Crane decision, respondent's action must be **sustained**.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

