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Remuneration for work performed during preventive detention in prison to be taxed as employment income

The Münster Tax Court decided that the income from work carried out in prison by a person placed in preventive detention is subject to income tax as remuneration from employment.

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Background

After serving a prison sentence, the plaintiff has been in extended custody (preventive detention) in a prison for many years. There, he works in a joinery and received compensation of roughly € 14,000 in 2019. The plaintiff initially declared this amount as income from employment. In contrast, the tax office took the compensation as other income since the plaintiff had not entered into an employment relationship. Accordingly, it did not grant the employee lump-sum deduction from employee income of €1,000. The plaintiff then argued that his remuneration is not taxable at all, as the focus of his work is on resocialization and not on earning revenue.

Court decision

The tax court partially upheld the claim. Unlike the tax office, it saw the plaintiff as an employee, and he was thus entitled to the employee lump deduction of € 1,000. In contrast to ordinary prisoners and according to the Preventive Detention Act of the state of North Rhine-Westphalia (*PDT-NRW*), those in preventive detention are not obliged to work. This led the court to argue in favor of an employment relationship. Based on the PDT-NRW, employment should merely be offered and was not mandatory. Accordingly, the plaintiff had worked in the joinery on the basis of his own free will. He was also integrated into the work organization of the joinery and was bound by instructions regarding place, time, and scope of work.

Although the plaintiff is not entitled to vacation, he nevertheless may claim ten days off from work. His remuneration is based on the hours worked. The fact that the amount paid for the working hours is fixed by law does not preclude the assumption and presence of wages.

Contrary to the plaintiff's opinion, the income is taxable. This is not hindered by the fact that the prison job is intended in particular to teach, promote and maintain the skills and abilities for regular employment to secure a living after the release from prison. The activity is at least - as in the case of trainees or the employment of people with disabilities for integration purposes - also aimed at increasing income through the exchange of services.

The appeal to the Supreme Tax Court was permitted.

Source:

Muenster Tax Court, decision of 20 September 2023 (case: 14 K 1227/21 E)

Keywords

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