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Taxation - Federal Income Tax - Deductibility of Seminar Cruise as Business Expense

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TAXATION — FEDERAL INCOME TAX — DEDUCTIBILITY OF SEMINAR CRUISE AS BUSINESS EXPENSE—Petitioner, a physician, participated in a postgraduate medical seminar held aboard a passenger ship during an eighteen-day cruise of the Mediterranean. A number of hour-long lectures followed by discussion periods were held on the ship during each of the six or seven days it was at sea and occasionally while in port; additional study was not required. Petitioner spent most of his time in leisurely activities aboard ship and in sightseeing. All expenses of the course and cruise were included in one charge which petitioner claimed as an ordinary and necessary business expense under section 162 (a).¹ The Commissioner of Internal Revenue disallowed the deduction. On petition to the Tax Court, *held*, only a small part of the total cost was an ordinary and necessary business expense² because of the vacation aspect of the cruise, similar courses offered in the United States, the number and extent of the lectures, the usefulness of the subject matter, and the petitioner's economic and social position. *Reuben B. Hoover*, 35 T.C. 566 (1961).

Expenditures for education qualify as ordinary and necessary business expenses if the primary purpose of the education is to improve the skills a taxpayer uses in his present trade or business, or to meet a condition of continued employment.³ Travel expenses, as well as meals and lodging while away from home, incurred primarily because of such education are deductible.⁴ A taxpayer may select the educational institution which best suits his needs, and a full deduction for transportation expenditures will not be denied solely because attendance at another institution would result in less travel. This is true even though a foreign institution is

¹ INT. REV. CODE OF 1954, § 162 (a).

² Only the expenses for meals and lodging during the time actually devoted to educational pursuits were allowed as deductions. Treas. Reg. § 1.162-5 (d) (1958).

³ Treas. Reg. § 1.162-5 (a) (1958). Expenses of education undertaken primarily for advancement in position, increased income, or to acquire new employment or professional specialty are not deductible. Compare *John S. Watson*, 31 T.C. 1014 (1959), with *Arnold Namrow*, 33 T.C. 419 (1959). See generally, *Hagendorf, Tax Court, in Watson, Interprets New Education Expense Regulations Broadly*, 11 J. TAXATION 226 (1959); *Loring, IRS Denying Educational Expense That Would be Ordinary and Necessary for Business*, 9 J. TAXATION 280 (1958); *Stuetzer, New Cases on Travel, Education, Help Draw Line Between Personal and Business*, 11 J. TAXATION 346 (1959).

⁴ Treas. Reg. § 1.162-5 (d) (1958).

selected.⁵ A question as to deductibility of the travel expenses arises when a taxpayer engages in personal activities in addition to his educational pursuits. A large portion of travel costs are normally incurred for a "main" trip as opposed to small side trips taken en route or after reaching the principal destination. The cost of side trips unrelated to education is clearly not deductible.⁶ Deductibility of the expense of the main trip, according to the Treasury Regulations, depends upon whether the primary purpose of the entire trip is personal or to obtain education.⁷ Each case will be considered in the light of its particular facts and circumstances.⁸ In determining the primary purpose of a trip the only consideration indicated by the regulations is a comparison of the time devoted to personal activities and to the pursuit of education. That single factor is sufficient to determine the purpose of a trip when, for example, two days are devoted to education, and personal activities occupy the following three weeks. But when a taxpayer engages in educational and personal activities during each day of the trip the deductibility of travel expenses is left somewhat in question. In the latter situation, it is suggested that factors other than a comparison of time devoted to education and personal pleasure may be important to the determination of the primary motive for the trip.⁹ From the opinion in the principal case it appears that the following five factors are also significant: vacation aspects of the activities planned for the time not devoted to the pursuit of education; other apparent attractions of the geographical area and of the accommodations provided; the reasonableness of the taxpayer's choice among alternative means of obtaining equivalent education; the value of the benefit derived from the education compared with the total cost; and taxpayer's economic and social position. The first four of these factors seem self-explanatory, but the last leaves some doubt. It may express the idea that substantial income and prestige can negate the sincerity of the taxpayer's alleged desire and need for further education or, alternatively, that his economic position may be so modest that the education motive seems unquestionable. On the other hand, luxury transportation and accommodations may be an ordinary expenditure for a person with a large income and, conversely, an extraordinary expense for a taxpayer with a small income. Consideration of all six factors will be highly significant to a taxpayer when he desires to engage in some activity admittedly for pleasure.

⁵ Rev. Rul. 60-97, 1960-1 CUM. BULL. 69, 75.

⁶ Treas. Reg. § 1.162-5 (d) (1958).

⁷ If the trip is primarily personal no expenditures for transportation can be deducted, however, expenses for meals and lodging during the time spent in educational pursuits are deductible. *Ibid.*

⁸ Treas. Reg. § 1.162-5 (d) (1958).

⁹ The regulations refer to the comparison of time devoted to personal activities and to educational pursuits as "an important factor." *Ibid.* (Emphasis added.)

Trips of a more typical commercial nature having the characteristics of a vacation present issues analogous to those which arise with regard to deducting travel expenses for education. The provision for the deductibility of commercial travel in the regulations is essentially the same as the section governing travel incident to education.¹⁰ In a recent decision, *Patterson v. Thomas*,¹¹ the Fifth Circuit held that a salesman could not deduct the expenses of attending a convention. One of the factors considered by the court was a comparison of the time spent in business meetings with the time devoted to personal activities. Although very little time was spent at formal business meetings, this fact alone was not dispositive. Another factor was that the convention was held at a resort hotel. Staying at a resort hotel, like the cruise to the Mediterranean in the principal case, showed an attraction of the geographical area and accommodations unrelated to the alleged purpose of the trip. The attitude of the company toward the convention was also a factor. From letters written by persons planning the convention, the court inferred that the company sought to convince the participants that the trip was to be one primarily devoted to pleasure. Similarly, the brochure advertising the cruise in the principal case did not emphasize the courses offered; rather, the travel agency aimed its description of the ship's facilities and itinerary at vacation-minded customers.¹² Other cases involving combined business-pleasure trips also indicate the importance of the factors of comparing time spent on business with that devoted to personal activities, vacation aspects of the plans for the trip, and personal considerations in selection of the itinerary or destination of the trip.¹³ In *Ellen C. Kynell*¹⁴ the taxpayer's previous residence in the two countries visited on a business trip strongly suggested a motive other than business reasons for choosing the particular geographical area. The Tax Court also was concerned with the disproportion between possible business benefits and the cost of the trip in that case. Substantially the same consideration is inherent in comparing the value of benefit derived from education with the total cost.

Travel to secure medical care frequently has the appearance of a vacation. Section 213 of the Code¹⁵ allows a personal deduction for the expense

¹⁰ Compare Treas. Reg. § 1.162-2 (b) (1958), with Treas. Reg. § 1.162-5 (d) (1958).

¹¹ 289 F.2d 108 (5th Cir.), cert. denied, 368 U.S. 837 (1961), 47 VA. L. REV. 1097.

¹² The Internal Revenue Service has recently warned taxpayers to give careful consideration to implications of tax deductibility contained in certain advertisements of tours described as professional seminars. According to the Service, the activities often described in programs and brochures raise substantial questions with regard to qualification as deductible business expenses. IRS News Release IR No. 357, Jan. 30, 1961, summarized in 7 CCH 1961 STAND. FED. TAX REP. ¶ 6295.

¹³ E.g., *Ralph E. Duncan*, 30 T.C. 386 (1958); *Edgar A. Basse*, 10 T.C. 328 (1948).

¹⁴ 23 P-H Tax Ct. Mem. 891 (1954).

¹⁵ INT. REV. CODE OF 1954, § 213.

of "transportation primarily for and essential to medical care"¹⁶ subject to the limitations imposed by the other provisions of that section. The reasonableness of a taxpayer's choice among alternative means, whether for medical care or education, is a significant factor in determining his primary motive for incurring the expenditure.¹⁷ One taxpayer, for example, chose to maintain his home in St. Louis and travel twice a year to more favorable climates to benefit his health. Since he was retired, however, he could have moved to an area with a warm, even climate; deduction was denied.¹⁸ In *Max Carasso*¹⁹ the Tax Court allowed deduction of the transportation expenses of a trip to Bermuda which followed two serious operations. The only factor specifically discussed was the taxpayer's modest income which was considered adequate evidence that his primary motive was medical necessity rather than a vacation. This is essentially the first of the alternative explanations suggested earlier for the economic and social position factor. *Max Carasso*, then, provides authority for interpreting the language of the principal case.

The cases seem to indicate that the same arguments can be made for and against deduction of travel expenses incident to educational pursuits and business of a commercial nature, and transportation expenses incident to medical care. By enumerating six important factors there is no intention to suggest that other considerations may not be significant to the determination of a taxpayer's primary purpose for incurring travel expenses. Obviously all of the factors will not be relevant in every case. Cases from all three classifications, however, ought to be considered with respect to a problem in any one of the areas.

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¹⁶ INT. REV. CODE OF 1954, § 213 (e) (1) (B).

¹⁷ *But see* Stanley D. Winderman, 32 T.C. 1197 (1959).

¹⁸ Bertha M. Rodgers, 25 T.C. 254 (1955), *aff'd*, 241 F.2d 552 (8th Cir. 1957).

¹⁹ 34 T.C. 1139 (1960), *aff'd*, 292 F.2d 367 (2d Cir. 1961). A deduction for board and lodging expenses was denied in this case. The Third Circuit, on the other hand, recently allowed deduction of board and lodging, as well as transportation expenses incident to medical care. *Commissioner v. Bilder*, 289 F.2d 291 (3d Cir.), *cert. granted*, 368 U.S. 912 (1961) (No. 384), *affirming*, 33 T.C. 155 (1959).