Michigan Law Review

Volume 52 | Issue 3

1954

Taxation - Federal Income Tax - Deductibility of Expenses Incurred by Attorney in Attending Tax Institute

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TAXATION—FEDERAL INCOME TAX—DEDUCTIBILITY OF EXPENSES INCURRED BY ATTORNEY IN ATTENDING TAX INSTITUTE—Petitioner was a member of a firm of lawyers engaged in general practice in Binghamton, New York. The firm did enough work in federal taxation to warrant petitioner's specializing in this field, and his partners relied upon him to keep abreast of all significant developments in tax law. Petitioner attended the Fifth Annual Institute on Federal Taxation, conducted in New York City under the sponsorship of New York University and designed exclusively for practitioners and specialists in the tax field. He incurred expenses for travel, board, lodging, and tuition, all of which he deducted as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code. The Commissioner disallowed the deduction, and his determination was upheld by the Tax Court on the theory that petitioner's expenses were non-business ones of a personal nature. On appeal to the Court of Appeals for the Second Circuit, *held*, reversed. A tax lawyer's expense in

attending a tax institute is deductible as a valid business expense. *Coughlin v. Commissioner,* (2d Cir. 1953) 203 F. (2d) 307.

Deductibility of a business or professional expense under section 23(a)(1) of the Internal Revenue Code hinges not only on the requirement that the expense be "ordinary and necessary," i.e., customary in and appropriate to the particular business or profession involved,[1] but on the further requirement that it be incurred in "carrying on" a trade or business, or if a traveling expense, "in the pursuit of a trade or business."[2] The relationship between the expense and the profession must be sufficiently direct and proximate to prevent its categorization as a nondeductible "personal" expense under section 24(a)(1).[3] The principal case illustrates how diffuse a line exists between these professional and personal expenses when a traveling expense is involved which is chiefly voluntary and not legally or financially compelled by the taxpayer's profession. While the tax lawyer's deduction was here upheld, other courts have disallowed a university professor's research expenses in Europe,[4] an attorney's expenses in making a European study for the American Bar Association,[5] and the costs to an engineer of attending a special evening course to aid him in his occupation.[6] Nevertheless, by considering cases according to one or the other of three lines of inquiry, the Bureau and the courts have achieved some consistency in analysis, if not in result. First, if the taxpayer's business or profession legally or financially demands incurring the expense, deductibility seems assured.[7] In the principal case petitioner was not under a legal obligation to study the newest tax developments, and yet the court found that his moral obligation to do so, though falling in the twilight zone between required and purely voluntary expenses, was a sufficient equivalent.[8] Had petitioner instead traveled abroad to study comparative law, his expenses would obviously have little relation to

[1] For common synonyms of the words "ordinary and necessary," see Treas. Reg. 118, §39.23(a)-15; Welch v. Helvering, 290 U.S. 111, 54 S.Ct. 8 (1933); Deputy v. DuPont, 308 U.S. 488 at 495, 60 S.Ct. 363 (1940).

[2] For the purposes of the present discussion, these are the pivotal words in I.R.C., §23(a)(1)(A).

[3] Willard S. Jones, 13 T.C. 880 at 882 (1949). See also 1 P-H FED. TAX SERV. ¶11,266.

[4] Manoel Cardozo, 17 T.C. 3 (1951).

[5] Wade H. Ellis, 15 B.T.A. 1075 (1929), affd. 60 App. D.C. 193, 50 F. (2d) 343 (1931).

[6] Knut F. Larson, 15 T.C. 956 (1950).

[7] Such was the situation in Hill v. Commissioner, (4th Cir. 1950) 181 F. (2d) 906, where a Virginia statute required that taxpayer attend summer school courses as a prerequisite to renewal of her teaching certificate. Some other mandatory professional expenses are itemized in Treas. Reg. 118, §39.23(a)-5.

[8] Just what the moral obligation is equivalent to the court does not specify. Conceivably the obligation could be "legal" in the sense of being a duty owed to the other partners, and yet "financial" in that the petitioner needed to keep his present clients and maintain the normal growth of his own practice. Confusion frequently results from the use of the word "moral" in legal contexts.

the requirements of his professional specialty.[9] A second inquiry relates to the taxpayer's motive in incurring the expense. The newer cases distinguish between a purpose to maintain an existing professional status or position, and a purpose to advance in rank or attain a new office.[10] If the traveling and tuition expenses result merely from an attorney's sharpening his tools for continuing in his present work, as in the principal case, the connection with pure business expenses is very close. On the other hand, it has been said that seeking a new and better position, like the purchase of new tools, corresponds more closely to the acquisition of a capital asset under section 24(a)(2).[11] Since most human endeavor is designed ultimately toward advancement, this distinction seems somewhat shallow. Perhaps a third procedure, more in conformity with the pivotal words of the Code, would be to allow deduction of those expenditures for travel and study which have a trade or professional purpose and whose benefits will be immediately reflected in the taxpayer's profession with only incidental effect on his personal cultural advancement.[12] Regardless of the particular merits of these three approaches, the upshot is that the deductibility of convention or institute expenses may often depend on the subjective motive of the taxpayer in incurring the expense together with the use to which he puts his newly gained knowledge—factors easily within personal control and manipulation. In specific reference to attorneys traveling to bar association meetings, several grounds for deductibility can be adduced. For example, the general practitioner who attended the 1952 American Bar Association meeting could justifiably claim that knowledge and technique acquired through such practical discussions as those on corporations, probate and trust law, and municipal law aided the carrying on of his particular practice.[13] In addition, such meetings promote personal contact between practitioners from different areas—contact which expedites the giving and receiving of referred clients between attorneys and furthers the pursuit of their profession.

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[9] A somewhat analogous situation would be that of the university professor who studied abroad voluntarily simply to improve his general reputation for scholarship and learning, and whose expense deduction was disallowed. Manoel Cardozo, note 3 supra.

[10] While the Tax Court does not seem to have recognized this distinction, it has been employed by the Fourth Circuit in Hill v. Commissioner, note 6 supra, and by the Second Circuit in the principal case. Shortly after the Hill decision, the Commissioner promulgated a bulletin stating in part, "In general, summer school expenses incurred by a teacher for the purpose of maintaining her position are deductible . . . as ordinary and necessary business expenses, but expenses incurred for the purpose of obtaining a teaching position, or qualifying for permanent status, higher position, an advance in the salary schedule, or to fulfill the general cultural aspirations of the teacher, are deemed to be personal expenses. . . ." I.T. 4044, 1951-1 Cum. Bul. 16 at 17.

[11] "Reputation and learning are akin to capital assets, like the good-will of an old partnership." Welch v. Helvering, note 1 supra, at 115. This capital asset analogy would seem defective, however, since "learning" or "position" can hardly be depreciated or sold.

[12] See principal case at 309.

[13] In Wade H. Ellis, note 5 supra, the petitioning lawyer was allowed to deduct his expenses in attending an American Bar Association meeting. On the state level, institutes such as the 1952 Institute on Michigan Land Title Examination are close parallels to that in the principal case and expenses incurred in attending them should similarly be deductible.