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Taxation - Federal Income Tax - Educational Training as an Ordinary and Necessary Business Expense

It is reasonable to assert that a like result could obtain here under similar conditions.

In summary it may be said that present property uses can not be restricted for public use by an arbitrary exercise of the police power when the property owner should be compensated in eminent domain proceedings;[18] and, these zoning ordinances, passed according to a valid exercise of the police power, must be directed toward the concrete objective of promoting the public health, safety, morals, or welfare.[19]

TAXATION—FEDERAL INCOME TAX—EDUCATIONAL TRAINING AS AN ORDINARY AND NECESSARY BUSINESS EXPENSE. Plaintiff, a Virginia school teacher, was required by statute to obtain a renewal of her teaching certificate from the State Board of Education in order to continue teaching.[1] In order to obtain a renewal, she was obliged to either present evidence of college credits in professional or academic courses or pass an examination upon five specified books. Electing to present evidence of further college credits, plaintiff attended summer school at Columbia University. She deducted the costs incurred in her 1945 income tax return as "ordinary and necessary business expenses."[2] The Commissioner of Internal Revenue disallowed this deduction on the ground that the cost of the summer school training was a personal expense.[3] The Tax Court approved this action, seemingly relying on the presumptive correctness of the Commissioner's finding and on the principle that legislative grace determines deductibility.[4] On appeal it was *held*, that the expenses were deductible under the circumstances as "ordinary and necessary business expenses" although plaintiff was required to obtain a renewal of her certificate only once every ten years. *Hill v. Commissioner of Internal Revenue*, 181 F.2d 906 (4th Cir. 1950).

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[18] Piper v. Ekern, 180 Wis. 586, 194 N. W. 159 (1923); cf. State ex rel. Taylor v. Jacksonville, 101 Fla. 1241, 133 So. 114 (1931).

[19] Village of Euclid v. Ambler Realty Co., supra note 1; Standard Oil Co. v. Bowling Green, supra note 2.

[1] "...No teacher shall be employed...unless such teacher holds a certificate in full force in accordance with the rules of certification laid down by the State Board of Education..." Va. Code Ann. tit. 11, c. 33, § 660 (1942).

[2] Int. Rev. Code § 23. "Deductions from Gross Income. In computing net income there shall be allowed as deductions:
(a) Expenses—
(1) Trade or Business Expenses—
(A) In General—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business ...traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business...."

[3] Int. Rev. Code § 24. "Items Not Deductible. (a) General Rule—In computing net income no deduction shall in any case be allowed in respect of—
(1) Personal, living, or family expenses..."

[4] Nora Payne Hill, 13 T.C. 291 (1949).

Unquestionably, teaching school is a business within the meaning of the tax law; nevertheless, the general question of what constitutes carrying on a "trade or business" has sufficient importance to warrant discussion. An early case stated that "business" is a very comprehensive term, embracing everything about which the person can be employed.[5] This definition was later held inapplicable in specific situations to the term as used in income tax law. Instead, an examination of the precise facts in each case was a prerequisite to a determination of whether a taxpayer's activity amounted to "carrying on a trade or business."[6] In general the importance of finding that a taxpayer is "carrying on a trade or business"—ordinarily a condition precedent to the allowance of a deduction of ordinary and necessary business expenses—has been lessened somewhat, in all probability, by an amendment to the Internal Revenue Code which permits some deduction of non-trade and non-business expense.[7] The question of what constitutes carrying on a trade or business is still pertinent, however, for the purpose of determining whether a particular expense is deductible, since teachers' summer school expenses are not included in the definition of non-trade or non-business expenses.[8]

To be deductible, a business expense must be both "ordinary" *and* "necessary", not "ordinary" *or* "necessary". The difficulties inherent in establishing a precise standard for determining whether an expense is "ordinary and necessary" result in the statute being ambiguous in that particular. As Mr. Justice Cardozo has aptly stated: "Here, indeed as so often in other branches of the law, the decisive distinctions are those of degree and not of kind...The standard set up by the statute is not a rule of law; it is rather a way of life..."[10] The expense must bear some reasonable relation to the conduct of the business,[11] and may be ordinary though it happens but once in a lifetime.[12] A particular expense may be "ordinary and necessary" in one situation and not in another, depending on the circumstances, though the same type of business be involved.[13]

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[5] See Flint v. Stone Tracy Co., 220 U.S. 107, 171 (1910).

[6] Higgins v. Commissioner, 312 U. S. 212 (1941). See also Weber v. Kavanagh, 52 F. Supp. 619 (E. D. Mich. 1943).

[7] Int. Rev. Code § 23.

[8] U. S. Treas. Reg. 111, § 29.39 (a)-15 (1946). "Among expenditures not allowable under § 23 (a) (2) are the following...expenses of taking special courses or training...and expenses such as expenses in seeking employment or in placing oneself in a position to begin rendering personal service for compensation..."

[9] Welch v. Helvering, 290 U. S. 111 (1933).

[10] See Welch v. Helvering, 290 U. S. 111, 114-15 (1933).

[11] Kornhauser v. United States, 276 U.S. 145 (1928); cf. Helvering v. Highland 124 F.2d 556 (4th Cir. 1942).

[12] Commissioner v. Heininger, 320 U.S. 467 (1943); cf. Deputy v. DuPont, 308 U.S. 488 (1940).

[13] Higgins v. Commissioner, 312 U.S. 212 (1941); cf. Welch v. Helvering, 290 U.S. 111 (1933).

The theory that deductibility depends upon legislative grace[14] became popular shortly after the influence of the principle of "construing deductibility provisions against the government"[15] ended.[16] It has been frequently held that a Commissioner's finding is presumptively correct.[17]

The legislative history of the tax treatment of school expenses offers little prospect that the principle of the instant case will be extended to situations where the teacher is not under a legal compulsion to attend summer school in order to maintain eligibility to teach. Such expenses have always been considered personal and non-deductible where the teacher attended summer school voluntarily as a means toward professional advancement,[18] though expenses occurred in analogous situations have been found deductible as "ordinary and necessary."[19]

WILLS—ORAL CONTRACT TO MAKE MUTUAL RECIPROCAL WILLS—ENFORCEABILITY OF AFTER RECEIPT OF BENEFTS UNDER.—The husband and wife executed mutual reciprocal wills according to their oral contract whereby each agreed to devise to the other his or her entire estate. Further provisions in the wills provided for equal distribution of the remainder, upon the death of the survivor, to the niece of W and the niece of H. Upon the death of W, H received the benfits of her will. H died, and a subsequent will by him was probated wherein his niece, D, was named sole beneficiary. D, the niece of H, is now sued in this action in her personal capacity and as executrix of the will of H, by P, the niece of W, for specific performance of the alleged oral contract entered into by H and W[1] wherein they agreed to make the aforementioned mutual reciprocal wills. The trial court *held* that the evidence established the existence of such contract; that upon its breach by H he became liable to P; but, that P failed to present a proper claim for money damages to the executrix of the estate of H during the time prescribed by law and as required by the Statute of Non-claim and was therefore divested of a remedy; and that P is not entitled to equitable relief in that she had an adequate remedy at law. Upon appeal it was *held* that the trial court erred; that P was not divested of remedy by the provisions of

[14] Deputy v. DuPont, 308 U.S. 488 (1940); cf. New Colonial Ice Co. v. Helvering, 292 U.S. 435 (1934) (one of the first cases indicating a change in policy.)

[15] Gould v. Gould, 245 U. S. 151 (1917).

[16] White v. United States, 305 U.S. 281 (1938).

[17] New Colonial Ice Co. v. Helvering, 292 U.S. 435 (1934); White v. United States, 305 U.S. 281 (1938).

[18] O. D. 892, 4 Cum. Bull. 209 (1921): "Expenses incurred by school teachers in attending summer school are in the nature of personal expenses incurred in advancing their education and are not deductible in computing net income."

[19] Denny, 33 B. T. A. 738 (1935) (permitting actor to deduct physical training expenses); Hempel v. Commissioner, P-H (1947) T. C. Mem. Dec. § 47-183 (1947) (permitting opera singer to deduct expenses of voice coaching. And see Hutchinson, 13 B.T.A. 1187 (1928).

[1] N.D. Rev. Code § 14-0706 (1943) validates such contracts.