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Deductibility of Living Expenses as Medical Expenses

Edmund L. Walton Jr.

FEDERAL INCOME TAXATION— DEDUCTIBILITY OF LIVING EXPENSES AS MEDICAL EXPENSES

The question of whether living expenses incurred on a trip recommended by a physician should be deductible as a medical expense was answered in the negative by the Supreme Court of the United States in *Commissioner of Internal Revenue* v. *Bilder*.[1] In this case the taxpayer had spent winters in Florida upon the advice of his doctor following four heart attacks during the previous eight years. The Court recognized the legitimacy of the trip as a medical expense and allowed all transportation expenses as deductible while refusing to allow deductions for the rental of an apartment in which taxpayer and his family resided while in Florida.

The Supreme Court granted certiorari[2] to resolve a conflict which had arisen in the court of appeals. Both the Tax Court[3] and the Court of Appeals for the Third Circuit[4] had allowed deduction of living expenses in the *Bilder* case while the Court of Appeals for the Second Circuit had handed down a contrary decision in the parallel case of *Carasso* v. *Commissioner*.[5] In the *Carasso* case the taxpayer on the advice of his physician spent eight days in Bermuda following two serious operations in which a large portion of his stomach had been removed. Refusing to distinguish the *Bilder* case, the Court denied all deductions for expense of the trip other than those directly relating to transportation. The Internal Revenue Code of 1939 provided:[6]

> . . . (1) The term "medical care" means amounts paid— (A) for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body . . .

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[1] 30 U. S. LAW WEEK 4291 (U. S., May 1, 1962).

[2] Commissioner v. Bilder, 368 U. S. 914 (1961).

[3] 33 T.C. 155 (1960).

[4] 289 F.2d 291 (3rd Cir. 1961).

[5] 292 F.2d 367 (2d Cir. 1961).

[6] INT. REV. CODE OF 1939 § 23(x).

To this the 1954 Code added:[7]

> . . . or (B) for transportation primarily for and essential to medical care referred to in subparagraph (A).

This was the only modification to the 1939 Code definition of medical expenses. In addition the 1954 Code limits the deductibility of living expenses which were impliedly deductible in the 1939 Code.[8]

The section of the Internal Revenue Code dealing with medical expenses remained virtually unchanged from its original enactment in 1942 until 1954.[9] During this period the courts had little difficulty in recognizing the deductibility of living expenses as medical expenses.[10] The Internal Revenue Service followed these decisions in its pronouncements on the subject.[11]

The Third Circuit in *Bilder* attempted to construct a case for deductibility through application of judicial history stating that the legislative history on the subject is ambiguous. It declined to put a great deal of weight on House and Senate reports.[12] The *Bilder* argument is that the paragraph concern-

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[7] INT. REV. CODE OF 1954 § 213.

[8] § 24 of the 1939 Code reads: "(a) General rule.—In computing net income no deduction shall in any case be allowed in respect of—
(1) Personal, living or family expenses except extraordinary medical expenses deductible under Section 23(x) . . ."
The 1954 Code deals with this matter as follows at Sec. 213: "Except as otherwise expressly provided in this chapter, no deductions shall be allowed for personal, living, or family expenses."

[9] 1 SEIDMAN, LEGISLATIVE HISTORY OF FEDERAL INCOME AND EXCESS PROFITS TAX LAWS (1953-1939) 1394.

[10] Commissioner v. Stringham, 183 F.2d 579 (6th Cir. 1950); William B. Watkins, 54,045, 54,102 P-H MEMO T.C. (1954); William H. Duff, III 53,362 P-H MEMO T.C. (1953); Benjamin F. Pepper, 56,167 P-H MEMO T.C. (1956); Stanley D. Winderman, 32 T.C. 1197 (1959); Embry Est. v. Gray, 143 F.Supp. 603 (W.D. Ky. 1956).

[11] Rev. Rul. 261 1955-1 CUM. BULL., 307; I. T. 3786 1946-1 CUM. BULL. 75.

[12] The court cited Acker v. Commissioner, 258 F.2d 568, 576 (6th Cir. 1959), *aff'd* 361 U.S. 87 (1959), but no mention was made of more recent decisions which adopt these reports as an indication of legislative intent in dealing with interpretation of the Internal Revenue Code; American Automobile Association v. United States, 367 U.S. 687 (1961); Knetsch v. United States, 364 U.S. 361 (1961).

ing transportation expenses is merely a clarification of existing law.[13]

The Second Circuit in the *Carasso* case relied primarily upon Congressional reports accompanying the legislation to clarify the Code.[14] The Internal Revenue Service adopted the same interpretation.[15] The Tax Court in its decision in the *Carasso* case admitted that it had erred in *Bilder*[16] and has been following the *Carasso* case in its more recent decisions.[17]

The Supreme Court in reversing *Bilder* and thereby agreeing with *Carasso* has removed the last vestige of doubt. Now it can be stated with assurance that deductible expenses incurred on a trip undertaken for medical purposes include only those which directly concern transportation and exclude those involving room and board.

E. L. W.

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[13] *Accord:* Frank S. Delp, 30 T.C. 1230 (1958): "The Internal Revenue Code of 1954 contains no change in the definition of medical care but merely includes the addition of a clarifying subsection specifically permitting a deduction for amounts paid for 'transportation primarily for and essential to medical care'."

[14] S. REP. No. 1622, 83rd Cong., 2d Sess., at 219 and 220 (1954); H. R. REP. No. 1337, 83rd Cong., 2d Sess., at 60 (1954). "The deduction permitted 'for transportation primarily for an essential to medical care' clarifies existing law in that it specifically excludes deduction of any meals and lodging while away from home receiving medical treatment . . ."

[15] Rev. Rul. 58-110, 1958-1 CUM. BULL. 155; Treas. Reg. 1.213-1(e)(iv).

[16] Carasso v. Commissioner, 34 T.C. 1139 (1960).

[17] Citing Carasso, the Tax Court denied a taxpayer deductibility for board and lodging at a Florida motel where he was staying upon his physician's recommendation. William Samha, 60,203 P-H Memo T-C (1960).