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Taxation--Medical Expenses--Limited Deduction for Capital Improvement Allowed (Riach v. Frank, 302 F.2d 374 (9th Cir. 1962))

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then Congress is the proper forum in which to remedy the problem.[33]

TAXATION — MEDICAL EXPENSES — LIMITED DEDUCTION FOR CAPITAL IMPROVEMENT ALLOWED. — Appellant suffered from a heart condition that rendered him incapable of climbing the steep hillside that connected the street and lower level of his residential property. In order to enjoy the normal use of his property and to avoid further damage to his heart, the appellant erected a Hil-A-Vator, designed to carry him up and down the incline. He unsuccessfully sought to deduct the entire cost of the device as a medical care expenditure in the district court. In reversing the judgment of that court in favor of the Commissioner, the Circuit Court for the Ninth Circuit *held* that the expense involved in the purchase and installation of the Hil-A-Vator was a medical care expenditure, and, to the extent that the cost of the device exceeded the increase in value of the property, it was deductible. *Riach v. Frank,* 302 F.2d 374 (9th Cir. 1962).

Both the 1939 and 1954 Internal Revenue Codes contain substantially similar provisions for the deduction from gross income of certain medical expenses.[1] Both Codes likewise contain very

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[33] Certain sections of the Taft-Hartley Act do *expressly* repeal sections of the Norris-LaGuardia Act. For example, § 301(e) (61 Stat. 156 (1947), 29 U.S.C. § 185(e) (1958)) repeals § 6 of the Norris-LaGuardia Act. It would appear that if Congress had also intended to repeal § 4 this also would have been done expressly.

[1] Int. Rev. Code of 1939, § 23(x), added by ch. 619, § 127, 56 Stat. 825 (1942), as amended, Int. Rev. Code of 1939, ch. 2, § 24(a)(1), 53 Stat. 16 (1939), as amended, ch. 619, § 127, 56 Stat. 826 (1942) [hereinafter cited as 1939 Code]: "Deductions from gross income. In computing net income there shall be allowed as deductions: . . . . (x) Medical, dental, etc., expenses. Expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent . . . . (2) . . . . The term 'medical care,' as used in this subsection, shall include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body (including amounts paid for accident or health insurance)."
INT. REV. CODE OF 1954, § 213 [hereinafter cited as 1954 CODE]:

"Medical, dental, etc., expenses. (a) Allowance of deductions. — There shall be allowed as a deduction the following amounts of the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent. . . .
(e) Definitions—For purposes of this section—
(1) The term 'medical care' means amounts paid—
(A) for the diagnosis, cure, mitigation, treatment, or prevention of

similar provisions prohibiting the deduction from gross income of amounts paid out for permanent improvements or betterments made to increase the value of any property or estate of the taxpayer.[2] Consequently, a problem existed as to what extent, if any, a medical care expenditure could be deducted from adjusted gross income when the expense involved a permanent improvement or betterment which increased the value of the taxpayer's property.

In construing these sections under the 1939 Code, the Tax Court generally took the position that expenditures which involved a permanent improvement of the taxpayer's property would not be allowed as a medical expense deduction.[3] In *John L. Seymour*,[4] the Tax Court refused to allow a deduction for the cost and installation of an oil burner because the unit constituted a permanent improvement of the taxpayer's property. The deduction was disallowed despite the fact that the taxpayer was severely allergic to coal dust and had installed the oil burner on the advice of his physician. The court made no reference to any increase in value of the property, but rather stressed the fact that the installation was permanent. Likewise, in *Estate of Hayne*,[5] the court disallowed as a medical deduction the cost of an elevator installed in the home of the crippled taxpayer, on the grounds that it was installed primarily to solve a transportation problem and resulted in a permanent improvement of the taxpayer's property. The court considered it immaterial that there was no increase in the value of the property, emphasizing that the installation was permanent in the sense that it had a useful life of more than one year.

While the Tax Court was thus very reluctant to allow deductions for medical expenses involving permanent improvements or betterments of the taxpayer's property, the district courts took a position more favorable to the taxpayer.[6] In *Hollander v.*

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disease, or for the purpose of affecting any structure or function of the body (including amounts paid for accident or health insurance), or (B) for transportation primarily for and essential to medical care referred to in subparagraph (A)."

[2] 1939 Code § 24: "(a) General Rule. In computing net income no deduction shall in any case be allowed in respect of—(2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate . . . ."

1954 Code § 263: "(a) General Rule.—No deductions shall be allowed for—(1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate."

[3] Estate of Hayne, 22 T.C. 113 (1954); John L. Seymour, 14 T.C. 1111 (1950).

[4] *Supra* note 3.

[5] *Supra* note 3.

[6] Hollander v. Commissioner, 219 F.2d 934 (3rd Cir. 1955); Alexander v. United States, 57-1 U.S. Tax Cas. ¶ 9335 (W.D. Tenn. 1956).

Commissioner,[7] a victim of heart disease installed a collapsible inclinator in his home. The Court of Appeals, reversing the Tax Court, allowed a deduction of the purchase price and installation costs. The court distinguished *Seymour* [8] on the ground that the elevator there involved was a permanent improvement thereby implying that the inclinator was not a permanent fixture. The *Hollander* opinion was cited by the district court, in *Alexander v. United States,*[9] as authority for allowing as a medical expense deduction, a $2700 elevator installed in the residence of a heart victim. No mention was made of any increase in value of the taxpayer's property, nor did the court concern itself with the decision reached in *Seymour,* to the effect that no deductions would be allowed for permanent improvements.

The Tax Court, however, remained reluctant to allow the deduction of medical expenses involving permanent improvements of the taxpayer's property. For example, in *Frank S. Delp,*[10] the Tax Court disallowed the deduction of a $1750 central air-conditioner on the ground that no deduction could be allowed for an expenditure representing a permanent improvement to property. The court distinguished *Hollander* on the theory that the inclinator there was not a permanent improvement. However, in *Berry v. Wiseman,*[11] the district court allowed a medical expense deduction for the cost of an elevator installed on the taxpayer's property. The elevator, although permanent, did not increase the value of the property. In reaching its decision, the court cited both *Alexander* and *Hollander* as authority for allowing the deduction of a medical expenditure involving a permanent improvement of the property. In citing *Hollander* as authority for allowing the deduction, the court ignored the fact that the inclinator involved in that case apparently was not a permanent improvement. The Commissioner, in accepting the decision reached in the *Berry* case, qualified it to the extent that a permanent improvement that *increased the value of the property* would not be allowed as a medical expense deduction.[12]

In view of its traditional restraint in allowing deductions in this area, it is interesting to note that the Tax Court, in *Raymon Gerard,*[13] was the first to extend the *Berry* decision so as to allow the deduction, as a medical expense, of a permanent improvement which *increased the value of the taxpayer's property.* Thus, the court declined to follow the Commissioner's qualification of the

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[7] *Supra* note 6.
[8] John L. Seymour, *supra* note 3.
[9] *Supra* note 6.
[10] 30 T.C. 1230 (1958).
[11] 174 F. Supp. 748 (D.C. Okla. 1958).
[12] Rev. Rul. 411, 1959-2 CUM. BULL. 100.
[13] 37 T.C. 826 (1962).

Berry decision. The *Gerard* case involved a central air-conditioner costing $1300 which was purchased to alleviate cystic fibrosis. The resulting increase in value of the property was $800. The court held that the taxpayer was entitled to a deduction of $500 because the original expense had been compensated for only to the extent that the property had increased in value. Therefore, the taxpayer was entitled to a deduction for the difference.

Upon consideration of the relation between medical expenses and permanent improvements which increase the value of the taxpayer's property, the Court in the principal case rejected the Government's contention that if the installation increases the value of the property to any extent, the expenditure is not deductible in any amount.

> If it is supposed that an admittedly proper medical care expenditure was made upon the taxpayer's property at a cost of $1000 and the finding of the court is that the value of the whole property was increased by $1, it would not seem reasonable that the entire cost be disallowed a deduction.[14]

The Court indicated that the same conclusion would be reached even without a consideration of section 263 which disallows a deduction for amounts paid out for permanent improvements. The medical expense section itself limits deductions to those "not compensated for by insurance or otherwise." [15] Since an increase in the value of his property would, to that extent, compensate the taxpayer for the expenditure, the only amount deductible would be the difference between the cost of the improvement and the increase in value of the property.

In reaching the decision in the instant case, the Court also rejected the Government's contention that the facts here could be distinguished from earlier cases which involved elevators. Although those cases had frequently involved elevators which had been installed to provide for an "essential living function," the Court maintained that there is nothing in the statute, regulations, or cases which limits deductions to those improvements necessary for eating, sleeping and using the bathroom. Observing that "there is more to life than that," the Court concluded that, in installing the Hil-A-Vator, the taxpayer was motivated primarily by the mitigation or prevention of disease in the reasonable use of his property.[16]

After *Berry v. Wiseman*,[17] the prime consideration in allowing medical expense deductions for permanent improvements has been

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[14] Riach v. Frank, 302 F.2d 374, 379 (9th Cir. 1962).

[15] 1954 CODE § 213(c).

[16] The Court, aware of the obvious similarity between the principal case and the *Hayne* case (see text accompanying note 5 *supra*), distinguished the latter as involving primarily a transportation expense.

[17] *Supra* note 11.

the increase in the value of the taxpayer's property. In the principal case, the Court of Appeals has, for the first time, allowed the deduction of an expenditure representing the cost of a permanent capital improvement which *increased the value* of the taxpayer's property. However, the amount of the deduction is limited to the extent that the cost of the improvement exceeds the increase in value of the property.

Although the decision reached in the principal case is definitely favorable to the taxpayer, it must be borne in mind that there is a statutory limitation on the amount allowed as a deduction for medical expenses in a given year.[18]

Should the difference between the cost of the improvement and the increase in value of the property exceed this maximum, the taxpayer would be deprived of so much of the allowed deduction as exceeded the yearly maximum, unless permitted to amortize the difference over the period representing the useful life of the improvement. However, to what extent, if any, the deduction can be amortized, remains unanswered by this case. Since the Treasury Regulations have been amended to conform with the decision reached in the principal case, it is quite probable that any future litigation in the area will involve this question of amortization.[19]

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[18] 1954 CODE § 213(c).

[19] Treas. Reg. § 1.213-1 (1957), as amended, T.D. 6604, 1962 INT. REV. BULL. No. 34, at 12.