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Article 9

# Taxation--Scope of the Medical Deduction (Commissioner v. Bilder, 289 F.2d 291 (3d Cir. 1961); Carasso v. Commissioner, 292 F.2d 367 (2d Cir. 1961))

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by the present holding. It may at least be said that the decision represents an indirect revitalization of the Corrupt Practices Act philosophy of restricting union rights in the use of their funds for political campaigning, perhaps made necessary by the somewhat sterilizing effect on the act of the *CIO* holding. Now, a union member under a Railway Labor Act union-shop agreement has the right that his dues not be relegated to support a political activity to which he is opposed, regardless of whether or not the Corrupt Practices Act prohibits that activity.

Although the reasoning advanced by the majority does not directly face the fundamental issue of to what extent the individual's first amendment guarantees are a bondslave to the union's need of financial support for collective bargaining, the Court has nonetheless evidenced a concern, albeit indirectly, lest political freedom be made overly subservient to general group welfare under the guise of sharing the cost burden.

TAXATION — SCOPE OF THE MEDICAL DEDUCTION.— A taxpayer, who was suffering from a heart disease, was advised to take a trip to Florida for the winter months by his physician. The taxpayer claimed the hotel lodging expenses for himself and his wife and child as "medical deductions." The Court of Appeals for the Third Circuit upheld this claim. On the other hand, a taxpayer in the Second Circuit, who had been advised by his physician to take a trip to Bermuda, following major abdominal surgery, had his claim for deduction of lodgings for himself and his wife denied by the Court of Appeals. Both circuits, however, agreed that the costs of the transportation to Florida and Bermuda were allowable "medical deductions." *Commissioner v. Bilder,* 289 F.2d 291 (3d Cir. 1961), *cert. granted,* 30 U.S.L. WEEK 3154 (U.S. Nov. 13, 1961) (No. 384); *Carasso v. Commissioner,* 292 F.2d 367 (2d Cir. 1961).

Both the 1939 and the 1954 Internal Revenue Codes made provisions for the allowances of "medical expenses" as deductions from gross income.[1] Section 24(a)(1) of the 1939 Internal

[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]. INT. REV. CODE OF 1954, § 213 [hereinafter cited as 1954 CODE].

Revenue Code [hereinafter cited as 1939 Code] [2] provided that there would be no allowable deductions for personal, living, or family expenses unless those expenses were incurred as extraordinary medical expenses in which case they were deductible under section 23(x).[3] The 1939 Code section 23(x) defined "medical care" as including "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. . . ." [4] In *Commissioner v. Stringham,*[5] the Court of Appeals for the Sixth Circuit (in adopting the tax court's opinion) permitted a taxpayer a deduction under 1939 Code section 23(x) for the expenses incurred for the transportation, food and lodging of his daughter, who was in Arizona for medical purposes. The court, however, disallowed as a deduction that portion of the expenses attributed to the girl's tuition fees. These expenses were regarded as strictly personal and therefore not deductible. Thus, to qualify as a medical expense under 1939 Code section 23(x), the cost had to be primarily incurred for the prevention, treatment, or recovery of a health condition of the taxpayer or his family.[6] Expenses not meeting this test were considered as personal expenses and, consequently, were held to be nondeductible.[7]

At the time the 1939 Code was revised in 1954, the definition of "medical expenses" was discussed in detail in both the House of Representatives reports [8] and the Senate Committee

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[2] For text of 1939 Code § 24(a)(1), see note 13 *infra.*

[3] For text of 1939 Code § 23(x), see note 13 *infra.*

[4] 1939 Code § 23(x).

[5] 183 F.2d 579 (6th Cir. 1950) (per curiam), *affirming* 12 T.C. 580 (1949).

[6] Commissioner v. Stringham, 183 F.2d 579 (6th Cir. 1950) (per curiam), *affirming* 12 T.C. 580 (1949); Estate of Embry v. Gray, 143 F. Supp. 603 (W.D. Ky. 1956), *appeal dismissed per stipulation,* 244 F.2d 718 (6th Cir. 1957) (per curiam); Dobkin v. Commissioner, 15 T.C. 886 (1950). In Havey v. Commissioner, 12 T.C. 409, 413 (1949), the court stated: "It seems clear to us that the deduction in question may be claimed only where there is a health or body condition coming within the statutory concept and where the expense was *incurred primarily* for the prevention or alleviation of such condition. An incidental benefit is not enough." See 5 MERTENS, LAW OF FEDERAL INCOME TAXATION § 31A.08 n.50 (1956), wherein the following qualification test was posed: "Was the taxpayer, in incurring the expense, guided by a physician's bona fide advice that such a treatment was necessary to the patient's recovery from, or prevention of a specific ailment?"

[7] Commissioner v. Stringham, *supra* note 6, wherein the court disallowed the taxpayer a deduction for the costs of his child's education while she was in Arizona for the alleviation of a bronchial condition.

[8] H.R. REP. No. 1337, 83d Cong., 2d Sess. 30, A60, 3 U.S. Code Cong. & Ad. News 4017, 4197 (1954): "Subsection (e) defines medical care to mean amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of diseases or for the purpose of affecting any structure or function of the body (including amounts paid for accident or health insurance), or for transportation primarily for and essential to medical care. The deduction

reports.[9] These reports show that the intent of the lawmakers in revising these two sections was to eliminate food and lodging expenses of the taxpayer and his family as medical deductions.[10] An example, cited in the House report and later adopted by the Federal Tax Regulations,[11] clearly indicated both the legislative intent and the Commissioner's interpretation of the new sections:

> [I]f a doctor prescribes that a patient must go to Florida in order to alleviate specific chronic ailments and to escape unfavorable climatic conditions which have proven injurious to the health of the taxpayer, and the travel is prescribed for reasons other than the general improvement of a patient's health, the cost of the patient's transportation to Florida would be deductible but not his living expenses while there.[12]

To codify this intent Sections 262 and 213 of the 1954 Internal Revenue Code [hereinafter cited as 1954 Code] were passed. These sections differed slightly from their 1939 counterparts.[13] Section

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permitted for 'transportation primarily for and 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." (See text accompanying note 13 *infra*).

[9] S. REP. No. 1622, 83d Cong., 2d Sess. 35, 219-20, 3 U.S. Code Cong. & Ad. News 4621, 4666 (1954): "A new definition of medical expenses is provided which allows the deduction of only transportation expenses for travel prescribed for health, and not the ordinary living expenses incurred during such a trip."

[10] H. R. REP. No. 1337, *supra* note 8; S. Rep. No. 1622, *supra* note 9.

[11] Treas. Reg. § 1.213-1(e)(1)(iv) (1957).

[12] H. R. REP. No. 1337, *supra* note 8. *Accord,* Treas. Reg. § 1.213-1(e)(1)(iv) (1957). The Regulations also contain the following language which is very similar to that used in the House Committee Report on this section: "Expenses paid for transportation primarily for and essential to the rendition of the medical care are expenses paid for medical care. However, an amount allowable as a deduction for 'transportation primarily for and essential to medical care' shall not include the cost of any meals and lodging while away from home receiving medical treatment."

[13] 1939 Code

"§ 23 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. . . .

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

1954 CODE

"§ 213 Medical, dental, etc., expenses:

(a) Allowance of deduction.—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 disease, or for the purpose of affecting any structure or function of the

262 states that there shall be no deduction for personal expenses unless *expressly provided* elsewhere in the chapter.[14] This section makes no mention of "extraordinary medical expenses" as did its 1939 counterpart.[15] Section 213(a) and (e) like its 1939 counterpart provides for the deduction of expenses incurred in "medical care," but unlike the 1939 section, 1954 Code section 213(e) in its definition of "medical care" contains a specific enumeration allowing for a deduction for "transportation costs." [16] Other than this specific enumeration, the 1939 and 1954 sections for the most part read exactly alike.[17] It is this subparagraph, allowing a deduction for "transportation costs," that has caused the difference in interpretation in the two instant cases. The Third Circuit views it as a *specific* deduction, while the Second Circuit considers it an *exclusive* deduction. Therefore, the Third Circuit will permit other deductions to qualify under 1954 Code section 213, while the Second Circuit will recognize only a "transportation costs" deduction.[18]

The majority in *Bilder,* the Third Circuit case, rely strongly on the fact that Congress in enacting 1954 Code section 213 used the exact language of 1939 Code section 23(x).[19] The Court felt that the legislature had knowledge of the liberal judicial interpretation of 1939 Code section 23(x) and wished to perpetuate this construction in the new section.[20] The majority opinion indicates that the Court considered subparagraph (B), concerning "transportation costs," to be a *specific* deduction, rather than an *exclusive* deduction, *i. e.,* the legislature inserted this section so

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(including amounts paid for accident or health insurance)."

"§ 24(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)*; . . . ." (Emphasis added.)

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).*" (Emphasis added.)

"§ 262 Personal, living, and family expenses. Except as otherwise *expressly provided* in this chapter, no deduction shall be allowed for personal, living, or family expenses." (Emphasis added.)

[14] See note 13 *supra.*

[15] *Ibid.*

[16] 1954 CODE § 213(e)(1)(B): "for transportation primarily for and essential to medical care referred to in subparagraph (A)."

[17] See note 13 *supra.*

[18] It is to be noted that the words "transportation costs" when used in the tax area refer only to the fare incurred, *e. g.,* train fare, plane fare, etc. This is to be distinguished from "travel costs" which include "transportation costs," meals and lodgings. See Treas. Reg. § 1.62-1(g) (1957).

[19] Commissioner v. Bilder, 289 F.2d 291, 300 (3d Cir. 1961).

[20] *Ibid.*

that there would be no mistaking the fact that "transportation" expenses were deductible, and not for the purpose of making these expenses the *only* deductible expenses. On the other hand, *Carasso,* the Second Circuit case, and the dissent in *Bilder* argued that subparagraph (B) was intended as more than a specific deduction. These opinions stressed the need of reading 1954 Code sections 262 and 213 conjunctively.[21] If this were done they felt that the legislative intent was clearly manifested. They pointed out that 1954 Code section 262 permits deducting only those personal expenses *expressly provided* for,[22] and that the only personal expenses allowable as a "medical deduction" are the "transportation costs" provided for in section 213(e)(1)(B).[23] Hence, "the separate specific provision of section 213(e)(1)(B) allowing a deduction of transportation expenses essential to medical care suggests that the immediately preceding language of section 213(e)(1)(A) is intended to include only those things which we conventionally describe as medical bills."[24]

*Carasso* and the dissent in *Bilder* indicated the need to consult the legislative history of these sections to discover the intention of Congress in enacting them.[25] The majority in *Bilder,* on the other hand, urged the use of the so-called "plain meaning doctrine." This doctrine was expounded in *United States v. Hartwell,*[26] wherein the Court stated: "If the language [of the statute] be clear it is conclusive. There can be no construction where there is nothing to construe." [27] The doctrine precludes the use of any outside sources to aid in the interpretation of a statute, if the statute's meaning is plain on its face.[28]

It is to be noted that although the majority in *Bilder* seem to adopt the "plain meeting doctrine," the opinion points out its general decline in American jurisprudence. Even though some cases still apply this doctrine,[29] the majority of Supreme Court and Court of Appeals decisions have indicated that it should be discarded.[30] These cases urge that the courts consider all

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[21] Carasso v. Commissioner, 292 F.2d 367, 368 (2d Cir. 1961); Commissioner v. Bilder, 289 F.2d 291, 307 (3d Cir. 1961) (dissenting opinion).

[22] See note 13 *supra.*

[23] See note 13 *supra.*

[24] Commissioner v. Bilder, *supra* note 21, at 308.

[25] Carasso v. Commissioner, *supra* note 21, at 369; Commissioner v. Bilder, *supra* note 21, at 306.

[26] 73 U.S. 385 (1867).

[27] *Id.* at 396.

[28] United States v. Shreveport Grain & Elevator Co., 287 U.S. 77 (1932).

[29] MacDonald v. Best, 186 F. Supp. 217 (N.D. Cal. 1960); Fisher Flouring Mills Co. v. United States, 270 F.2d 27 (9th Cir. 1959).

[30] *E.g.,* Association of Westinghouse Salaried Employees v. Westinghouse Corp., 348 U.S. 437 (1955); Harrison v. Northern Trust Co., 317 U.S. 476 (1943); United States v. N. E. Rosenblum Truck Lines, Inc., 315 U.S. 50

sources that might aid them in discovering the true interpretation that should be given to a statute. In *Johnson v. United States*,[31] Justice Holmes said with regard to the consulting of legislative history in interpreting a statute:

> A statute may indicate or require as its justification a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur to the mind. The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed. The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for the courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before.[32]

The Supreme Court in *Harrison v. Northern Trust Co.*[33] recognized that no rule of law could exist which would prohibit a judge from resorting to legislative history in attempting to interpret a statute. *United States v. N. E. Rosenblum Truck Lines Inc.*[34] clearly indicates the Court's modern attitude toward the "plain meaning doctrine":

> Where the plain meaning of words used in a statute produces an unreasonable result, "plainly at variance with the policy of the legislation as a whole," we may follow the purpose of the statute rather than the literal words.[35]

The Supreme Court, in this last case, was permissive in its use of legislative history, but in *Ozawa v. United States*[36] and *Armstrong Paint & Varnish Works v. Nu-Enamel Corp.*[37] the Court said it was their *duty* to give effect to the legislative intent in enacting the statute.[38] Whether a court imposes a duty or not, is irrelevant, as long as it recognizes the need for considering

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(1942); Ozawa v. United States, 260 U.S. 178 (1922); Cabell v. Markham, 148 F.2d 737 (2d Cir.), *aff'd*, 326 U.S. 404 (1945); Johnson v. United States, 163 Fed. 30 (1st Cir. 1908).

[31] 163 Fed. 30 (1st Cir. 1908).

[32] *Id.* at 32.

[33] 317 U.S. 476 (1943).

[34] 315 U.S. 50 (1942).

[35] *Id.* at 55. See also Commissioner v. Acker, 361 U.S. 87, 95 (1959) (dissenting opinion), where Mr. Justice Frankfurter wrote: "The Court's task is to construe not English but congressional English. Our problem is not what do ordinary English words mean, but what did Congress mean them to mean. 'It is said that when the meaning of language is plain we are not to resort to evidence in order to raise doubts. That is rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists.'"

[36] 260 U.S. 178 (1922).

[37] 305 U.S. 315 (1938).

[38] Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U.S. 315 (1938); Ozawa v. United States, 260 U.S. 178 (1922).

sources outside of the statute itself in reaching its interpretation of a statute.[39] The Court in *Carasso* used the legislative history of 1954 Code sections 262 and 213 as a support for their interpretation of the sections. The *Bilder* Court chose to ignore the legislative intent for the sections and applied the "plain meaning doctrine."

In the light of the House and Senate reports and the Tax Regulations, the Second Circuit's decision in *Carasso* seems to have been the proper interpretation of 1954 Code sections 262 and 213. *Bilder* in its construction of 1954 Code section 213, concluded that the specific enumeration of "transportation costs" was merely a specific deduction. This is not plausible because the 1939 Code section 23(x) (the predecessor of 1954 Code section 213) had been interpreted as including these "transportation costs" and this section is repeated fully in the 1954 section. There would be no purpose in the legislature's inserting a specific enumeration in a statute if the same subject matter were covered in the immediately preceding subdivision of the same section. If for no other reason than this, the Court should have realized that they erred in their interpretation of the 1954 section. In an attempt to strengthen their construction of the 1954 Code section the Court in *Bilder* used the "plain meaning doctrine." But the Court went on, in the text of their opinion, and also in footnotes to their opinion to cite decisions of the United States Supreme Court and Courts of Appeals which clearly establish the doctrine as a creature of the past having little significance in modern jurisprudence. These flaws in the *Bilder* opinion have caused a decision which probably will not be followed in the Tax Court or any of the other circuits, and if allowed to stand will cause an inequitable tax advantage to taxpayers in the Third Circuit.

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[39] See Cabell v. Markham, 148 F.2d 737, 739 (2d Cir.), *aff'd*, 326 U.S. 404 (1945), wherein Judge Learned Hand remarked: "Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."

*But see* United States v. Manufacturers Nat'l Bank, CCH 1961 STAND. FED. TAX REP. (61-2 U.S. Tax Cas.) ¶ 9701, at 81820-21 (N.D.N.Y. Oct. 6, 1961), wherein Judge Foley, interpreting a provision of the Internal Revenue Code, said: "The legislative history gives me little concern. In my judgment, the statute seems too plain to go beyond. . . . The statement that the section . . . continues in effect the provisions of existing law . . . is meager legislative history to contradict simple English language. . . . If such statements raised doubt, and they do not for me, my comfort in interpretation remains in reading the Statute."