



## Tax Reduction Letter

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### ***Lage v. Commissioner***

52 T.C. 130 (T.C. 1969)

DAWSON, Judge:

Respondent determined a deficiency of \$804.60 in petitioners' Federal income taxes for the year 1964.

The only issue presented for decision is whether petitioner Walter G. Lage, who was vice president and general superintendent of Chaney & James Construction Co., is entitled to deduct as an ordinary and necessary business expense the amount of \$2,667 paid in 1964 to Tol S. Higginbotham III, a psychologist and management consultant, for education and training in the handling of various corporate financial and personnel matters.

#### FINDINGS OF FACT

Some of the facts have been stipulated and are found accordingly.

Walter G. Lage (herein called petitioner) and Audrey C. Lage are husband and wife whose legal residence was Dallas, Tex., at the time <sup>131</sup> they filed their petition in this case. They filed a joint Federal income tax return for the year 1964 with the district director of internal revenue at Dallas, Tex.

Petitioner attended Iowa State College for 2 years under the Navy V-12 program during World War II. After the war he did not return to college, but began working for an engineering firm in Chicago. After 6 years in such work, petitioner moved to Dallas, where he worked for 9 years as a project manager and superintendent for Shaw & Estes, a construction company.

Beginning in 1961, petitioner was employed as the president of Pioneer Electrical Co., a subsidiary of Chaney & James Construction Co. In March 1963, Gifford Chaney, the president and chief executive officer of Chaney & James Construction Co., was killed in an automobile accident. Herschel James then became president of the company. In view of petitioner's experience in the construction industry and the company's need for experienced personnel, he was transferred to the position of vice president and general superintendent of the construction company and remained in that position throughout the year 1964. At that time it was believed that he was the only executive in the company capable of assuming the responsibilities of the operations.

While petitioner was president of Pioneer Electrical Co., he had consulted with Taliferro (Tol) S. Higginbotham III, an experienced business management consultant and psychologist, who was then training and advising a substantial number of corporate executives and was serving as a

management consultant to several corporations. Higginbotham was an invalid, confined to his home, where he carried on his business consulting activities and his work as a psychologist.

During 1964 Higginbotham was on a retainer of \$1,065 per month by Chaney & James Construction Co. as a management consultant. In such capacity he gave advice, on almost a daily basis, to all officials of the construction company with respect to current operating problems encountered in the business. This consultation and advice was usually given during office hours over the telephone or at meetings in Higginbotham's home.

When petitioner became vice president of the construction company, he felt that, although he was generally knowledgeable with respect to the construction business, he was deficient in certain key aspects of corporate management, viz, financing, bonding, accounting, and personnel problems. Consequently, he personally entered into an oral agreement for Higginbotham to educate and train him in those management areas so that he might improve his managerial skills. This was frequently done after regular office hours. It involved general education and training of a tutorial nature in personnel management, psychology, <sup>132</sup> finance, banking, and bonding. Although some of the matters related to, and had their genesis in, specific problems involving the construction company, the consultation fees paid to Higginbotham by the corporation did not include the education and training provided to petitioner individually.

After about 14 months under petitioner's direction, the construction company recovered from rather severe financial difficulties and was making a profit from its operations.

Since petitioner was unable in 1964 to pay Higginbotham the normal fee (\$50 for 40 minutes) for management education and training, it was agreed that petitioner would pay Higginbotham a percentage of his bonus for 1964, if the company operated successfully. In compliance with the agreement, petitioner paid Higginbotham \$2,667 by a cashier's check dated December 23, 1964.

On his Federal income tax return for 1964 the petitioner claimed a deduction of \$2,667 for "Business Management Training Consultant Fees." In his notice of deficiency respondent determined that the claimed deduction "is not an allowable deduction under internal revenue laws."

#### ULTIMATE FINDING

The expenditure of \$2,667 made by petitioner in 1964 to Higginbotham was for "education" which improved management skills required by petitioner in his employment as vice president of Chaney & James Construction Co.

#### OPINION

Petitioner's expenditure for management training is deductible under section 162(a), [1] I.R.C. 1954, if it constitutes an ordinary and necessary business expense. Pursuant to Rev. Rul. 68-191, 1968-1 C.B. 67, petitioner has elected to rely on section 1.162-5, Income Tax Regs., adopted in T.D. 6918, 1967-1 C.B. 36, which provides, in pertinent part, as follows:

Expenses for education. — (a) General Rule. Expenditures made by an individual for education (including research undertaken as part of his educational program) which are not expenditures of a type described in paragraph (b)(2) or (3) of this section are deductible as ordinary and

necessary business expenses (even though the education may lead to a degree) if the education

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(1) Maintains or improves skills required by the individual in his employment or other trade or business, \* \* \*

Petitioner contends that the amount he paid Higginbotham was for "education" improving skills required by him in his employment 133 as vice president of Chaney & James Construction Co., and therefore deductible under section 162(a). Respondent, on the other hand, makes two arguments: (1) That petitioner is not entitled to a deduction for the amount paid Higginbotham because the training he received was not "education" as that term is used in the regulations, and (2) that petitioner had failed to carry his burden of proving the deductibility of the claimed expense.

We agree with petitioner. The inquiry called for by section 1.162-5(a)(1), Income Tax Regs., is essentially one of fact, i.e., did the "informal" education petitioner received from Higginbotham improve the skills required in his employment? We think it did. Our findings of fact so indicate.

It is indeed surprising that respondent requested a finding of fact, on this record, that Higginbotham is not qualified as a management consultant. Apparently this is based on his belief that a privately tutored, self-educated man, who has never attended an institution of higher learning, cannot qualify as a management consultant. We reject this implication as unsound. As valuable as it may be, a college or graduate degree in business administration is not an indispensable qualification for a management consultant. Higginbotham has been an assistant superintendent of a construction company; senior accountant for the water and gas department of a large city; regional manager of an engraving company with supervision over 11 west coast States; an official in the marketing department of the Chevrolet Division of General Motors; district manager and special representative for the Dodge Division of the Chrysler Corp.; special assistant to the president and general manager of the Southwestern Division of United Transports; and a management specialist and technical advisor to the staff of the 3d Army during World War II. During the past 20 years Higginbotham has been an invalid, confined to his home, where he has carried on his private business-management consulting activities and his work as a psychologist. He now has about 38 corporate executives as clients and renders management advice to about 25 corporations. Consequently, there is not the slightest doubt in our minds that he is a qualified management consultant.[2]

We disagree with respondent's contention that the word "education," as used in section 1.162-5(a) of the regulations, does not encompass the type of instruction and training Higginbotham provided to petitioner. Respondent's argument on this point is that —

while it may well be that petitioner's consultations with Mr. Higginbotham were "educational" in the sense that, afterwards, petitioner knew more about the operation 134 of the corporation and his function with respect thereto, this is not "education" referred to in section 1.162-5 of the regulations.

It is our view that respondent's conception of "education" in the light of these facts and in this context is too restrictive. "Education" includes not merely instruction in a school, college, university, or a formally conducted training program, but embraces the acquiring of information and knowledge from a tutor. See and compare *Weyl v. Commissioner*, 48 F.2d 811, 812 (C.A. 2,

1931); and *Jones v. Better Business Bureau of Oklahoma City*, 123 F.2d 767, 769 (C.A. 10, 1941), for general definitions of "education." It is clear that the deduction for educational expenses is not limited to formal or institutional education. See, e.g., sec. 1.162-5(d), Income Tax Regs., allowing a deduction for the expenses of educational travel. Moreover, tutorial instruction is recognized and well established as a method of "education." Here the uncontroverted testimony of petitioner and Higginbotham is that petitioner was deficient in various aspects of management, e.g., financing, bonding, accounting, and personnel techniques, and that Higginbotham instructed and educated him in these matters.

This record establishes to our satisfaction that the training petitioner received was not necessary to enable him to meet the minimum educational requirements for his job, but rather to aid him in handling certain unusual transactions and problems. Nor was the expense incurred so that petitioner could qualify for a new position, a substantial advancement in position, or to fulfill his general educational aspirations. Cf. *N. Kent Baker*, 51 T.C. 243 (1968); and *James A. Carroll*, 51 T.C. 213 (1968). We think the "education" petitioner received from Higginbotham served to improve the managerial skills needed in his employment. Cf. *Cosimo A. Carlucci*, 37 T.C. 695 (1962).

We find no substance whatsoever in respondent's assertion that petitioner has failed to meet his burden of proof. He has shown that the skills were required and were improved. It is important that when petitioner was brought in to run the construction company, it was experiencing extremely difficult management and financial problems and, while petitioner was experienced in the construction business, he had never faced the unusual problems confronting him in this company.

In any event, we agree with petitioner's alternative contention that, in these special circumstances, the expenditure qualifies as his ordinary and necessary business expense under section 162(a), even if what petitioner got from Higginbotham is viewed as advice and consultation on specific managerial problems. Accordingly, we conclude that petitioner is entitled to the claimed deduction.

To reflect the concession of an automobile depreciation issue,

Decision will be entered under Rule 50.

[1] SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) IN GENERAL. — There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, \* \* \*

[2] If respondent truly believes Higginbotham is not qualified, it is strange that he did not disallow deductions obviously claimed by the construction company on its returns as consultant fees.