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**HITCHCOCK v U.S.**  
**12 AFTR 2d 5801 (DC-WA), 10/07/1963**

Kathleen HITCHCOCK, as Executrix of the Estate of E. J. O'Larey, Deceased, Plaintiff, v. U.S., Defendant. Case Information:

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7.BUSINESS EXPENSES - Automobile expenses - apportionment between business and personal use. Business expense deductions allowed for part of airplane expense allocated to business use of partnership. Costs were allocated between business and personal use on the basis of the number of hours the airplanes were used for each purpose. This cost allocation was also applied to the hours of time the planes flew empty. However, time necessary to deliver a new plane was allocated to basis as a capital cost, and time necessary to sell old plane was capitalized and added to basis of the old planes. Compensation of an employee was allocated one half to services as a pilot and one half to services other than as a pilot for the purpose of determining cost of operation of the planes.

8.BUSINESS EXPENSES - Miscellaneous expenses. Business expense deduction allowed for costs of operation of airplane reimbursed by another company. To the extent deductible, these costs were business expense of the taxpayer's partnership.

9.LOSSES - Sales of property - property used for both personal and income producing purposes. Amount of Sec. 1231 loss deductible on the sale of partnership's airplanes determined on the basis of percentage of business use. Basis was allocated between business and personal use according to the number of hours the plane was used for business purposes and for personal purposes.

10.BUSINESS EXPENSES - Automobile expenses - apportionment between business and personal use. Business expense deductions allowed for part of expense allocated to business use of partnership.

**OPINION**

Findings of Fact

Judge: LINDBERG, District Judge:

- (1.) That at all times herein mentioned, KATHLEEN HITCHCOCK has been and now is the duly appointed, qualified and acting Executrix of the estate of E. J. O'Larey, deceased.
- (2.) That prior to March 31, 1958, E. J. O'Larey, Mrs. C. J. Hitchcock, Philip S. Hitchcock, Richard Hitchcock and M. G. Hitchcock were co-partners, doing business as White Swan Lumber Company. That E. J. O'Larey owned a five per cent (5%) interest in said partnership business at all times mentioned herein prior to and at the time of its dissolution on or about March 31, 1958.
- (3.) That E. J. O'Larey died testate on or about September 5, 1960 and his will [pg. 5803] was duly admitted to probate in the Superior Court of the State of Washington, in and for Yakima County, and Kathleen Hitchcock, the plaintiff herein, was duly appointed and qualified as Executrix of said estate, all of which more fully appears in said estate matter, being probate cause number 25,409 of the records and files of the clerk's office of said Superior Court. That said estate proceedings are now pending, and the plaintiff is now the duly appointed, qualified and acting Executrix of the estate of E. J. O'Larey, deceased, fully authorized to bring this action on behalf of said deceased.
- (4.) That Janet O'Larey died on or about April 13, 1960, leaving her husband, E. J. O'Larey, surviving, and said E. J. O'Larey was the sole heir of said deceased and all of her estate passed to E. J. O'Larey, including any right of action Janet O'Larey had to maintain an action for refund of federal income tax.
- (5.) That this action arises under the Internal Revenue laws of the United States.
- (6.) That at all times herein mentioned, the defendant, United States of America was, and now is a sovereign body politic.
- (7.) That heretofore and on or about January, 1961, the plaintiff paid to the District Director of Internal Revenue at Tacoma, Washington, the sum of \$627.31 plus interest, and the further sum of \$739.22 plus interest.
- (8.) That heretofore and on or about April 5, 1961, plaintiff duly filed with the District Director of Internal Revenue at Tacoma, Washington, her claim for refund for income taxes and interest for the year 1956 in the sum of \$627.31 plus interest, and for the year 1957 in the sum of \$739.22 plus interest, and that copies of said claims for refund are attached to plaintiff's complaint on file in the above entitled court and cause, and are marked Exhibits "A" and "B" respectively, and by references to said Exhibits "A" and "B", the same are made a part hereof as though fully set forth herein.
- (9.) That the claims for refund filed by the plaintiff with the District Director of Internal Revenue at Tacoma, Washington, for the years 1956 and 1957 were disallowed in full by the District Director of Internal Revenue at Tacoma, Washington, on or about January 3, 1962. That more than six months expired after the filing of said claims for refund for the years 1956 and 1957 without any final or formal action being taken thereon by the District Director of Internal Revenue or his representative prior to the filing of the complaint in the above-entitled case.

(10.) All logging equipment consisting of Hysters, trucks, trailers and tractors which were acquired in 1956 and 1957 have a reasonable useful life of five years and a reasonable salvage value of five per cent (5%) of original cost.

(11.) The gang saw and all capitalized costs in connection therewith shall be divided into the following categories with useful lives and acquisition and salvage value as follows:

(A.) \$20,000 for long lived assets which will have a life of 142 months, or the life of the existing timber block. These assets consist of cut-off saw, green chain, miscellaneous equipment and a small gang saw building. At the end of 142 months these assets will have little or no value except for scrap and the scrap value will not exceed \$500.00;

(B.) The gang saw has a useful life of five years, and an original cost of \$12,492.00 and a salvage value of \$3,322.00;

(C.) All other assets in connection with the gang saw are short lived assets with a ten-year life and no salvage value.

(12.) A riderless carriage was abandoned in 1957 which resulted in a proper deduction in the amount of \$6,321.57.

(13.) For the years 1956 and 1957, the following items were properly deducted by the White Swan Lumber Company, a co-partnership, namely,

(A.) \$1,715.48 paid to DeAtley Paving Co.,

(B.) \$2,252.70 paid to Lone Pine Paving Co.,

(C.) \$2,000 paid to Stanford Research,

(D.) \$4,000 paid to Boyd, Olofson & Co. as accounting fees,

(E.) \$852.99 paid to Central Chain, and,

(F.) \$739.97 paid to Lucas and Wolfe.

(14.) \$1,167.59 of the original \$2,020.58 deduction for chain repairs was a capital expenditure. [pg. 5804]

(15.) That \$265 paid for a wedding gift to Dick Nelson was not properly deductible.

(16.) That the airplanes owned and used by White Swan Lumber Company, a co-partnership, during the years 1956 and 1957 were required by the business of said White Swan Lumber Company and were used by said partnership for purposes of locating tracts of timber, examining the terrain, determining the location for constructing logging roads and the method of logging, locating and determining the method of fighting forest fires, obtaining and delivering repair parts for logging equipment and saw mill, expediting business trips in the shortest time possible and other necessary business uses. The expenses of owning and operating said airplanes were ordinary and necessary business

expenses of said partnership and are properly deductible as such, and the parties to this case stipulated accordingly, subject to the ruling of the court as to the amount of said expenses which should be disallowed by reason of any personal use made of said airplanes. That during the year 1956 the Beechcraft airplane No. 628B was operated a total of 303 hours and 8 minutes. That said airplane was used for business uses and purposes 156 hours and 23 minutes of said time, and said plane was used for personal use 122 hours and 20 minutes. That the balance of the total time of 303 hours and 8 minutes after deducting the hours of business use and personal use is 24 hours 25 minutes and this time of 24 hours and 25 minutes should be allocated between the business and personal use on a percentage basis, that is to say, the percentage of hours of personal use to the total hours of business and personal use shall be determined, and the percentage of hours of business use to the total hours of business and personal use shall be determined and these respective percentages shall be used to allocate the 24 hours and 25 minutes between personal and business use. The hours of use determined as above are as follows:

Beechcraft 628-B. 1956			
Personal .....	122.33 hr.	10.717 hr.	133.050 hr. 43.892%
Business .....	156.383	13.700	170.083
To Allocate .....	24.417		
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Total flight time ...	303.133 hr.	24.417 hr.	303.133 hr.

(17.) That during the year 1956 M. G. Hitchcock paid out in travel expense \$2,957.00 and White Swan Lumber Company paid out \$1,693.00, making a total of \$4,650.00. That of said total amount of \$4,650.00, \$2,045.52 was for personal use and \$2,604.48 for business and is properly deductible as an ordinary and necessary business expense.

(18.) That during the year 1957 the Beechcraft Airplane 49K was operated a total of 250 hours and 30 minutes. That said airplane was used for business uses and purposes 153 hours and 25 minutes of said time and said airplane was used for personal use 57 hours and 20 minutes. That the balance of the total time of 250 hours and 30 minutes after deducting the hours of business use, being 153 hours and 25 minutes, and personal use being 57 hours and 20 minutes, leaves 39 hours and 45 minutes. That of said balance of 39 hours and 45 minutes, 20 hours is to be allocated between business and personal use and 19 hours and 45 minutes is to be capitalized and added to the cost of the Beechcraft 49K airplane as hereafter provided. That the allocation of the 20 hours between business and personal use is to be on a percentage basis as set forth in paragraph 16 above, the computation thereof being as follows:

Beechcraft 49K, 1957			
Over-all flight time .....	250.5 hr.		
Eliminated hours for cost of plane ..	19.75		
-----			
Balance to allocate below .....	230.75 hr.		
Personal .....	57.333 hr.	5.44 hr.	62.773 hr.
Business .....	153.417	14.56	167.977
Allocate .....	20.		
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	230.75 hr.	20. hr.	230.75 hr.

(19.) That during the year 1957 the Beechcraft 628B was operated a total of 58 hours and 40 minutes. That of the total of 58 hours and 40 minutes that said plane was operated, 11 hours and 10 minutes was for business uses and purposes, 10 hours and 30 minutes for personal use, 21 hours and 10 minutes for acquiring the new plane, the 49K, and 15 hours and 50 minutes was use for sale of the old plane, the 628B. That the 21 hours and 10 minutes use for acquiring the new plane, the 49K, should be capitalized and added to the cost of the new plane, and the 15 hours and 50 minutes use for sale of the old plane, the 628B, should be capitalized and added to the cost of the 628B plane as hereafter provided. The hours of use of the 628B for the year 1957 are set forth as follows:

Beechcraft 628B, 1957	
Over-all flight time .....	58.666 hr.
Eliminated hours .....	37.000
	-----
	21.666 hr.
Allocated to personal .....	10.5
	-----
Allocated to business .....	11.166 hr.

(20.) That during the year 1957 M. G. Hitchcock was reimbursed \$1,860.00 for travel expense listed at \$1,915.00. That \$55.00 of the listed amounts was never reimbursed to Mr. Hitchcock. The White Swan partnership paid out \$2,809.02 direct, in addition to the \$1,860.00, making a total of \$4,689.02; that said sum of \$4,689.02 consisted of personal expenses of \$1,211.12 less \$55.00 not reimbursed, leaving \$1,156.12, \$3,081.77 expense of White Swan Lumber Company, \$63.07 cost of new plane, the 49-K, and \$388.06 on sale of the old plane, the 628-B. That the disallowed travel expense would be the sum of \$1,156.12, \$63.07 and \$388.06 or \$1,607.25.

(21.) That during the years 1956 and 1957 Heppner Pine Mills, Inc., a corporation, furnished to White Swan Lumber Company, a partnership, a Cessna Airplane 64D. This plane was owned by the Heppner Pine Mills, Inc. and furnished to White Swan Lumber Company with the understanding that M. G. Hitchcock could use the plane to fly from White Swan, Washington, to Heppner, Oregon, when required, and White Swan Lumber Company could use the plane for business uses provided Heppner Pine Mills, Inc. could use the larger plane of White Swan Lumber Company, namely, the 628B and 49K when required by Heppner Pine Mills, Inc. if not in use by White Swan Lumber Company. That this agreement continued for the years in question. That in the year 1957 it was determined and agreed between White Swan Lumber Company and Heppner Pine Mills, Inc. that uses made by Heppner Pine Mills, Inc. of the White Swan Lumber Company planes and travel expenses incurred by White Swan Lumber Company for Heppner Pine Mills, Inc. had exceeded in value the use made of the Cessna plane by White Swan Lumber Company and Heppner Pine Mills, Inc. agreed to and did reimburse White Swan Lumber Company the sum of \$2,869.56 for expenses and \$4,380.00 for the use of White Swan Lumber Company's planes and pilot's salary. That the total reimbursement made by Heppner Pine Mills, Inc. to White Swan Lumber Company for the two years in question is \$7,249.50. That since White Swan Lumber Company received this reimbursement for travel expenses and expense and plane operation, the White Swan Lumber Company is entitled to deduct the items of expense and flying time shown in the Revenue Agent's

Report and the report of the appellate staff as Heppner Pine Mills, Inc. and said items are, in fact, business expense of White Swan Lumber Company and are hereby found to be such and White Swan Lumber Company is entitled and directed to deduct such amounts and expenses as business expense of White Swan Lumber Company.

(22.) That prior to 1956 the White Swan Lumber Company employed CHARLES BONAUDI as an airplane pilot and to perform other services for White Swan Lumber Company, and the Court finds that the salary and bonus paid by White Swan Lumber Company to Charles Bonaudi during the years 1956 and 1957 were paid fifty per cent for his services as a pilot and fifty per cent for his services performed for White Swan Lumber Company other than as a pilot. That the salary and bonus paid to Charles Bonaudi during said years is allocated one-half to services as a pilot and one-half for his services for White Swan Lumber Company other than as a pilot. [pg. 5806]

(23.) That the Cessna plane 64D during the years 1956 and 1957 was used as follows: During 1956 sixty-five per cent of its use was for business for White Swan Lumber Company; twenty-five per cent for business for Heppner Pine Mills, Inc., and ten per cent for personal use. During 1957, seventy per cent of its use was for business for White Swan Lumber Company; fifteen per cent for Heppner Pine Mills, Inc. and fifteen per cent for personal use. That by reason of the agreement between White Swan Lumber Company and the reimbursement made by Heppner Pine Mills, Inc. to White Swan Lumber Company, the use of said plane in 1956 and 1957 for Heppner Pine Mills, Inc. was, in fact, business expense of White Swan Lumber Company and chargeable and deductible as such by White Swan Lumber Company. That the Court's finding as to allocation of Cessna 64D expense for 1956 and 1957 is as follows:

	1956	1957
Business .....	65%	70%
Heppner expense allowed as expense of White Swan Lumber Company .....	25%	15%
	-----	-----
	90%	85%
Disallowed as personal .....	10%	15%
	-----	-----
	100%	100%

(24.) That for the purpose of computing the loss on the sale of the Beechcraft 628B in 1957, the Revenue Agent, in his report, used percentages of use in the years 1955, 1956 and 1957. The partnership return for the year 1955 had been settled and the Court finds and the parties agreed that for the purpose of computing the allowable loss on sale of the Beechcraft 628B in 1957, the percentages to use in the computation are as follows:

	Use in 1956	Use in 1957	Total	Percentage of Total
PERSONAL .....	133.05 hr.	10.5 hr.	143.55 hr.	44.197%
BUSINESS .....	170.083 hr.	11.166 hr.	181.249 hr.	55.803%
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TOTAL .....	303.133 hr.	21.666 hr.	324.799 hr.	100%

That the net depreciated cost per appellate of \$37,768.77 should be increased by additional costs of \$510.61 and \$388.06 to a total basis of \$38,667.44. That after deducting selling price of \$25,000.00, the computed loss would be \$13,667.44 and 44.197 per cent of this amount would be \$6,040.60 leaving \$7,626.84 as a business Section 1231 loss in lieu of \$3,153.34 previously allowed by appellate.

(25.) That in computing the cost of sale for the Beechcraft 628B and the cost of purchase of the Beechcraft 49K, the same method should be applied in each instance and the direct cost of the flights to Wichita, Kansas, and return to buy the 49K and the flights for selling the 628B are determined on an hourly basis as follows:

Flight of 628B for Purchase of 49K		
Hours	Direct Cost	Total
21.167 hours	\$32.25 per hour	\$682.64
Flight of 628B for Sale of 628B		
Hours	Direct cost	Total
15.833 hours	\$32.25 per hour	\$510.61
Flight of 49K for Purchase of Plane		
Hours	Direct Cost	Total
19.75 hours	\$31.19 per hour	\$616.00

(26.) That the airfield use and rent as agreed to by the parties for the years 1956 and 1957 is as follows:

Over all Costs as Agreed Upon	
1956 .....	\$1,144.42
1957 .....	659.25

That the airfield use and rent as agreed to by the parties for the years 1956 and 1957 is as follows:

Overall costs as agreed upon for 1956, \$1,144.42; for 1957 \$659.25. That it was stipulated and agreed that the personal expense of the year 1956 is 43.892 per cent of \$1,144.42, reduced by five per cent of the overall expense, or \$57.42, making a net personal expense of \$445.09. That for the year 1957, it was agreed that 29.029 per cent of \$659.25, less five per cent of \$659.25 is personal expense. This amounts to \$158.41.

(27.) That the total expense of two cars which, to some extent, were [pg. 5807]used for personal use for the year 1956 is \$3,113.28 and for the year 1957 is \$3,038.85. That twenty-five per cent of the car expense for said respective years is disallowed as personal use and seventy-five per cent of said car expense for said two years is allowed as business expense.

(28.) That operating costs of Cessna plane after adjustment for 50 per cent of pilot's salary allocated thereto, was \$4,950.80 in 1956 and \$2,377.45 in the year 1957. That 10 per cent of \$4,950.80 was disallowed as being personal expense in 1956 and 15 per cent of \$2,377.45 was disallowed as being personal expense of 1957.

(29.) That 1956 operating costs of Beechcraft 628-B plane, after adjustment for 50 per cent of pilot's salary allocated thereto, was \$36,146.77. The cost per hour of flight was \$119.244 and the cost of 133.05 hours of personal flight would be \$15,865.41.

(30.) That 1957 operating costs of Beechcraft 628-B plane after adjustment for 50 per cent of pilot's salary allocated thereto, was \$15,168.66, and after further adjustment for allocated costs of securing new plane and disposing of old plane, the remaining cost was \$13,975.41. That the cost per hour of flight was \$645.02 and the cost of 10.5 hours of personal flight would be \$6,772.91.

(31.) That the 1957 operating costs of Beechcraft 49-K after adjustment for 50 per cent of pilot's salary allocated thereto, would be \$21,389.34, and after further adjusting for allocated costs of acquiring this plane, the remaining cost would be \$20,773.34. The cost per hour of flight was \$90.03 and the cost of 62.773 hours of personal flight would be \$5,651.10.

(32.) That to properly compute the income taxes payable by the partners in the years 1956 and 1957 it was necessary to determine the business expense of said White Swan Lumber Company, a partnership and the net income and loss from said partnership operation during the years 1956 and 1957. That it was also necessary to determine the distributive income of White Swan Lumber Company for the years 1956 and 1957, the two years in question. That the determinations made by the Court in this case constitute a basis for adjustments which should be made to distributive income as disclosed by the report of Appellate Staff on White Swan Lumber Company. This report disclosed distributive income of White Swan Lumber Company in the year 1956 as \$235,984.03 and in the year 1957 as \$160,733.91 and section 1231 loss in the amount of \$3,153.34. The facts herein found and determined by the Court are the basis for computation of adjustments which should be made to income as disclosed by said report of Appellate Staff on White Swan Lumber Company for the years 1956 and 1957.

From the foregoing Findings of Fact the Court makes the following Conclusions of Law

(1.) That the plaintiff have and recover judgment against the defendant on its first cause of action in the amount of \$422.89 with interest thereon as allowable by law, and

(2.) That the plaintiff have judgment against the defendant on its second cause of action in the amount of \$541.86 with interest thereon as allowable by law.

#### Judgment

The Court, having heard the evidence and the arguments of counsel, and having heretofore made and entered its findings of fact and conclusions of law herein, it is in conformity therewith, Ordered, that plaintiff have judgment against the defendant on the first cause of action in the amount of \$422.89, with interest thereon as allowable by law, and It is Further Ordered, that plaintiff have judgment against the defendant on the second cause of action in the amount of \$541.86, with interest thereon as allowable by law.