Seymour v. Commissioner
14 T.C. 1111 (T.C. 1950)

Van Fossan, Judge.

The Commissioner determined a deficiency in income tax in the amount of $580.28 for the year 1944. It is alleged that the Commissioner erred in disallowing claimed deductions, as follows: (1) Bad debt in the amount of $834.75, (2) medical expense in the amount of $845, (3) Ohio sales tax and cigarette tax in the amount of $30.30, and (4) loss by theft of silver gravy ladle and old California gold coin in the amount of $37.

Some of the facts following were stipulated and others were found from the testimony and exhibits.

FINDINGS OF FACT.

The petitioner is a resident of New Rochelle, New York. He filed his Federal income tax return for 1944 on the cash receipts and disbursements 1112 basis with the collector of internal revenue for the Albany District of New York.

Prior to and between January 1, 1941, and February 29, 1944, petitioner was employed by E. I. duPont de Nemours & Co., of Wilmington, Delaware, hereinafter referred to as the duPont Co.

The duPont Co. had a bonus plan which had been adopted by its board of directors on February 3, 1905, and amended at various times, the last amendment thereto having been made October 19, 1936. The bonus plan provided for class A and class B bonus awards. The class B bonus awards were granted to those employees who had contributed most in a general way to the company's success by their ability, efficiency, and loyalty, including those who had proved themselves qualified to occupy important managerial posts and to succeed to higher positions. The class B bonus awards were made from the class B bonus fund, which consisted of net earnings of duPont Co. set aside annually in that fund by its finance committee. Only those employees of duPont Co. were eligible for class B awards who on January 1 of the year in which the awards were made had been in the continuous employ of the company for at least two years. Class B bonuses were awarded during February of each year for services rendered during the preceding year. The form of the awards was, in the discretion of the finance committee, in common stock of duPont Co., or in cash to be invested in such stock. A "Bonus Custodian" appointed by the executive committee had management of all matters relating to bonuses awarded. The bonus plan, among other things, provided as follows:

VIII. COMMITMENTS OF BENEFICIARY

The Bonus Custodian shall procure from each beneficiary an irrevocable power of attorney with respect to any shares not immediately deliverable to the beneficiary hereunder, which power shall provide that —

(a) The beneficiary will not sell, assign or pledge any of such stock remaining in the custody of the Bonus Custodian;

(b) The Bonus Custodian shall receive and hold any stock dividend declared on the stock in his custody, same to be released to the beneficiary as and when the purchased stock in the custody of the Bonus Custodian is released; and

(c) In case the beneficiary leaves the service of the Company, or is dismissed, part of the stock in the custody of the Bonus Custodian may be sold at the then market value and in such case the proceeds shall be transferred to the Class "B" Bonus Fund, or to the Company, as hereinafter provided.

IX. RIGHTS OF BENEFICIARY

An award in stock of the Company, or the investment of a cash award in stock of the Company, shall vest in the beneficiary all the rights of a stockholder in such stock, subject (1) to the right of the Bonus Custodian to possession of certificates evidencing a portion of the stock as herein provided, and (2) to the right of the Company to have a part of the stock sold and the proceeds transferred to the Company in the case of Class "A" awards, and to the Class "B" 1113 Bonus Fund in the case of Class "B" awards, as provided in Article XI hereof, in case the beneficiary leaves the service or is dismissed as provided therein.

X. DELIVERY

1. When each part of a Class "A" three-part bonus is awarded or invested in the Company's stock as above provided, and when a Class "A" first and final bonus amounting (at the conversion or subscription price) to less than four shares is so awarded or invested, certificates of stock representing such award or investment, free from all restrictions, shall be delivered to the beneficiary immediately.

2. When any other bonus in the form of stock or in the form of cash to be invested in stock has been awarded, a certificate for one-fourth of the shares representing such award or investment, free from all restrictions, shall be delivered to the beneficiary immediately, and certificates for the balance shall be delivered to the Bonus Custodian who shall hold the same for release to the beneficiary as follows:

> ¼ of the total number of shares shall be released after one year from the end of the year for which the award is made;
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> ¼ of the total number of shares shall be released after two years from the end of the year for which the award is made;
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> ¼ of the total number of shares shall be released after three years from the end of the year for which the award is made;

provided, however, that should such beneficiary leave the service of the Company, settlement will be made as hereinafter provided.

No fractional share will be delivered or released hereunder.

3. When any bonus in the form of cash not to be invested in stock has been awarded, one-fourth of such award shall be paid to the beneficiary immediately, and the balance of such award shall be paid to the beneficiary in three equal annual installments, the first installment to be payable after the end of the year in which the award is made.

XI. FORFEITURE BY BENEFICIARY

1. The Bonus Custodian shall open an account with each beneficiary, charging him with the total number of shares or cash in his award or investment, crediting him immediately with one-quarter thereof, and crediting him thereafter each month at the rate of 1/48th of such total number of shares or cash, as the case may be, beginning with January of the year in which the award was made.

2. If a beneficiary leaves the service of the Company, or is dismissed from such service, that portion of his stock represented at the time by the debit balance of his account may be sold at the then market value and the proceeds transferred to the Company (in the case of a Class "A" award) or to the Class "B" Bonus Fund (in the case of a Class "B" award), and in such case a certificate for the remaining portion of the stock shall be delivered to the beneficiary free from all restrictions; * * *

In 1941 the petitioner was awarded under the bonus plan a class B bonus of 11 shares of the common stock of duPont Co., and in 1942 he was awarded a class B bonus of eight shares of the common stock of the company. The following schedule shows the number of shares, evidenced by certificates of stock, delivered to the petitioner; the fractional shares credited in 1944 to his bonus account with the company; 1114 and the number of shares forfeited by him under the bonus plan by reason of the termination of his employment on February 29, 1944:

	1941 award		1942 award	
Date	Shares delivered to petitioner	Credits on account	Shares delivered to petitioner	Credits on account
Feb. 26, 1942	2			
Jan. 4, 1943	3			
Mar. 10, 1943			2	
Jan. 3, 1944	3		2	
Jan. 1944		17/48		8/48
Feb. 1944		17/48		8/48
Total	8	34/48	4	16/48
Shares forfeited	2	14/48	3	32/48

On or about February 28, 1949, petitioner was paid by duPont Co. for the credits on his bonus account of 1 2/48; shares at the rate of $139.125 per share, representing the mean between the highest and lowest price on the New York Stock Exchange on February 29, 1944. The 5 46/48; shares forfeited under the bonus plan were not delivered to petitioner, nor did he receive payment therefor. They were disposed of as provided under the bonus plan. After payment to petitioner of the value of his earned credits for January and February, 1944, the account of petitioner on the books of the company showed no obligation owing by the company to him.

The petitioner did not report as income in his 1944 income tax return the value of the 5 46/48; shares forfeited under the bonus plan. In his 1944 return he claimed as a bad debt deduction the amount of $834.75. The Commissioner disallowed the deduction, with the following explanation as shown as the statement attached to the notice of deficiency:

(a) It is held that the evidence does not establish your right to a deduction of $834.75 as a bad debt arising from services for the year 1944, covering the undelivered portion of a restrictive bonus awarded by your former employer.

The petitioner moved from Wilmington, Delaware, to New York in March or April, 1944, to engage in the practice of law. He purchased a house in New Rochelle, New York, where he and his family took up residence on April 1, 1944. The house was then heated by a large, hand-fired coal furnace. The house and the furnace were approximately 15 to 20 years old at that time. The petitioner would have preferred to purchase a house with an oil-heating furnace, but he had to take a house with a coal furnace. The furnace was in very good condition.

During the period in question, the United States was at war and the installation of oil-burning equipment or the conversion of furnaces from coal burning to oil burning was, with certain exceptions, 1115 prohibited in private homes by the wartime regulations, which were administered by the Petroleum Administrator for War.

Under date of April 19, 1944, the petitioner made application to the Petroleum Administrator for War for permission to convert his home heating plant to oil. In such application the petitioner stated that because of an allergy to coal dust and ashes he could not take care of the furnace himself. He also obtained a letter dated April 19, 1944, from his doctor recommending the change to an oil-burning unit, which was attached to his application and read as follows:

This is to certify that I am now treating Mr. John L. Seymour of 90 Calton Road, New Rochelle, N. Y., for Bronchial Asthma, aggravated by dust inhalation. This condition in the patient was directly caused by inhaling the ashes, dust and fumes from the coal furnace in his home. He is a sufferer from chronic sinusitis, which will be aggravated by the necessity of tending the furnace. To tend the furnace will undoubtedly bring about repeated attacks of a nature similar to the one from which he is now suffering, and may have most serious consequences to him and those who depend on him.

I am informed by Mrs. Seymour, and believe it to be true, that their son Peter suffers from Hay Fever and from Asthma during the Hay Fever season. That condition will be aggravated by the coal burning hot water heater now in their home.

I consider the present heating system to be a menace to the health of Mr. Seymour and his son Peter, and I have under the circumstances directed Mr. Seymour not to enter his cellar, and I

recommend that he be granted the right to install an oil burner to replace the coal burning installations in his home.

The Petroleum Administrator for War, sometime between April 20 and April 25, 1944, issued an order authorizing petitioner to convert the heating unit in his home to oil. The order was surrendered by petitioner to the firm with which he had made a contract to remove the old heating plant entirely and install the new oil-heating plant at a cost of $800. In addition, it was necessary to have some plumbing work done in connection with the installation of the new furnace at a cost of $45. The old furnace was sold to such plumber for $25. The new furnace was installed at the end of April or first part of May, 1944.

A few days after petitioner had moved into his new home, the fire in the furnace having gone out, he removed all the coal and ashes therein and rebuilt the fire. About 24 hours thereafter he became ill and was confined to his bed for about 5 days. A few days after he had sufficiently recovered to return to work, the fire in the furnace having gone out, he again removed the coal and ashes and rebuilt the fire. Within 24 hours thereafter he suffered an attack similar to, but more severe than, the first attack. After reviewing the circumstances preceding petitioner's 2 attacks, the doctor called in by petitioner determined that petitioner was susceptible to coal dust and ashes. Petitioner's wife was a small woman and incapable of running the coal furnace. The oldest of their three children at the time was 10 1116 years of age. A son named Peter, then about 9 years of age, suffered from hay fever and asthma. Petitioner was unable to procure anyone to take care of the coal furnace at that time.

After the installation of the oil furnace the petitioner was not afflicted with attacks of illness similar to those above referred to.

The petitioner in his 1944 income tax return claimed the cost of the installation of the oil-burning furnace of $845 as a medical expense. The Commissioner disallowed the deduction.

The petitioner lived in Ohio for several months during 1944. During his stay there he purchased a wrist watch for his wife, for which he paid about $60, including Ohio sales tax and Federal tax.

The petitioner was a cigarette smoker to a slight extent. Cigarettes purchased during 1944 were mainly purchased in New York for his wife's use.

In his 1944 income tax return the petitioner claimed a deduction of $30.30 for "Ohio Sales Tax & Cigarette tax," which deduction was disallowed by the Commissioner.

The petitioner owned a California minted one dollar gold coin, octagonal in shape and smaller and thinner than a dime. The coin was kept by petitioner's wife in a drawer in a box with some other objects. One day toward fall in 1944 petitioner's wife, while looking for some object in that drawer, discovered that the coin was gone and so reported to petitioner. In his 1944 income tax return the petitioner claimed a deduction of $25 for the loss of the coin.

The petitioner also owned a silver gravy ladle of antique design which was kept in a silver box in the pantry between the dining room and kitchen. About the time petitioner's wife observed that the above mentioned coin was missing she also noticed that the gravy ladle was gone. In his income tax return for 1944 the petitioner claimed a deduction of $12 for the loss of the gravy ladle.

The gold coin and ladle were not insured against theft or otherwise.

When petitioner and his family moved to New York, they brought with them from Wilmington a servant who stayed with them for several months. Thereafter many and various persons were employed to do housework, some working by the day and others for varying periods of time.

OPINION.

VAN FOSSAN, Judge:

It is contended by petitioner that he is entitled to a bad debt deduction in the amount of $834.75 under section 23 (k) (1) of the Internal Revenue Code. It is argued that the awards vested in petitioner all the rights of a stockholder, that the awards constituted a debt owed by the company to petitioner, and that the debt became a bad debt to the extent of the value of the 5 46/48; shares at the time such shares were divested by the bonus custodian. It is 1117 also contended by petitioner that he is entitled to a deduction under section 23 (k) (2). It is argued that the 5 46/48; shares were a part of petitioner's capital assets and that such shares became worthless in the taxable year when such shares were taken from him without compensation.

The first and most obvious answer to petitioner's claim of a bad debt deduction under section 23 (k) (1) is that, assuming it was a debt, he has not proved that the debt became worthless, that he had unsuccessfully attempted to collect from duPont, and that the duPont Co. was not financially responsible. Similarly, his claim under section 23 (k) (2) that the stock became worthless in the taxable year is to be answered by stating that he presented no evidence establishing his contention of the worthlessness of the stock.

There is yet another reason to disallow the claimed deduction and that is, that there is no evidence showing that petitioner reported as income the fair market value of the shares of stock as of the time awarded to him in 1941 and 1942, respectively. Under petitioner's theory, the stock awards constitute compensation received by him in those years. A taxpayer may not take a deduction in connection with an income item unless it has been taken up as income in the appropriate tax return. See Charles A. Collin, 1 B. T. A. 305, and Maurice P. O'Mera, 8 T. C. 622, 632. Thus he failed to establish a basis for the bad debt or loss.

Thus it is that, looked at in any of several ways, petitioner has no ground for claiming a deduction.

The next item arises from petitioner's claim as a medical expense of the cost of installing an oil heater in his home. To be allowable, the expense must come within the statute.[1] The statute deals with "expenses paid for medical care of the taxpayer." Not every expenditure prescribed by a physician is to be catalogued under this term, nor is every expense that may be incurred for the physical comfort of a party a medical expense. See Edward A. Havey, 12 T. C. 409. The statute states by way of definition that the term "medical care * * * shall include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure 1118 or function of the body * * *." In approaching this question it is necessary to have in mind the basic concept of section 24 (a) (1) of the code that personal, living, and family expenses are not deductible. Thus, many expenses, such as the cost of vacations, though

undoubtedly highly and directly beneficial to the general health, are not deductible because they fall within the category of personal or living expenses. A fortiori, under the general concept of the income tax law capital expenditures of permanent benefit to a property, such as is the present item, are not deductible as current expenses. Certainly there is no basis in general law to which taxpayer can point for support of his deduction.

He who claims a deduction must prove that he comes within the terms of the governing statute. This is but another way of saying that he must prove that he comes within the intent of Congress in enacting the statute, for deductions are a matter of legislative grace. We are unable to find in the history of the statute any evidence of an intent by Congress to create an exception to the general rule that capital expenditures are not deductible as current expenses. If such a radical departure from basic concepts were intended, surely it would not be left to inference or conjecture. It would have been specifically set out in the statute. Statutes are to be interpreted reasonably. We do not believe it reasonable to hold that the installation of an oil burner, a permanent improvement in petitioner's property, is to be classified as a medical expense under the provisions of section 23 (x). The nature of the expense here under consideration serves to distinguish this case from such cases as L. Keever Stringham, 12 T. C. 580. We accordingly sustain the respondent.

The petitioner, in his 1944 income tax return, claimed a deduction for Ohio sales tax and cigarette tax paid in the amount of $30.30.

He testified that he purchased in Ohio a wrist watch for his wife for which he paid in the neighborhood of $100 and that the total tax paid the jeweler was $20, which he believed included the Federal and state taxes. After the hearing the petitioner conceded that the cost of the watch was actually in the neighborhood of $60 to $70, of which $46 to $50 was for the watch and $15 to $20 for a gold wrist band to replace a black cord band supplied with the watch and that the total Federal and state tax paid on the watch was about $15.

The Ohio sales tax levied on each retail sale made in the state of tangible personal property (with certain exceptions, including cigarettes) is three cents on each full dollar if the price is in excess of one dollar. Sec. 5546-2, Page's Ohio General Code, Ann. Since the sale of jewelry is not one of the exceptions mentioned in the statute and the tax is required to be paid by the consumer (Sec. 5546-3, Page's Ohio General Code, Ann.), the petitioner is entitled to a 1119 deduction of $1.80 for Ohio sales tax. The Federal excise tax on jewelry is imposed on the vendor and not the consumer. Ch. 19, Retailers' Excise Tax, I. R. C. The petitioner is, therefore, not entitled to any deduction for Federal excise taxes included in the price paid by him for the watch.

As to the cigarette tax there is no showing as to the amount of cigarettes purchased. Although a tax is imposed on cigarettes under Ohio law, secs. 5894-1 to 5894-3, Page's Ohio General Code, Ann., the tax is not imposed on the consumer. Clark v. Commissioner, 158 Fed. (2d) 851, which affirmed T. C. memorandum opinion (Apr. 1, 1946) wherein the Tax Court stated, in part, as follows:

Contention is also made for deduction of taxes paid upon cigarettes. No proof was made of the amount of such tax, but the amount of cigarettes used was proved, 730 packages by DeCamp and wife. Deduction is disallowed, however, since neither the Federal excise tax nor the Ohio cigarette tax was upon the consumer, and the Ohio sales tax specifically excepts cigarettes. * * *

The same applies to the New York tax on cigarettes. § 471, McKinney's Consolidated Laws of New York, Ann. The petitioner, therefore, is not entitled to any deduction for state taxes imposed under the laws of Ohio or New York on cigarettes purchased by him or his wife.

The only evidence in the record to support the claim that the gold coin and gravy ladle were lost by theft is that petitioner's wife told the petitioner that they were gone, that after the servant brought from Wilmington had left, they had a "stream of servants," and that it was possible for them to have stolen the coin and the ladle. The article may have been stolen, but the evidence does not justify a finding that theft was the exclusive possibility or probability. Because the servants had opportunity to take the items is not proof that the items were stolen by any one of them. There is no evidence that a thorough search was made for the items. Moreover, there is no evidence as to the value of the gravy ladle at the time of the theft. The petitioner testified that he was wrong in claiming a loss of only $25 for the gold coin because he felt it was worth a great deal more than that, but that it was worth at least that much. There is no evidence in the record to substantiate petitioner's statements about the worth of the coin. Upon all the evidence, it is our conclusion that the petitioner is not entitled to the claimed deductions of loss by theft. The disallowance of the claimed deductions of $25 for the coin and $12 for the ladle is approved.

Reviewed by the Court.

Decision will be entered under Rule 50.

[1] SEC. 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 specified in section 25 (b) (3), to the extent that such expenses exceed 5 per centum of the adjusted gross income. If only one surtax exemption is allowed under section 25 (b) for the taxable year, the maximum deduction for the taxable year shall be not in excess of $1,250. If more than one surtax exemption is so allowed, the maximum deduction shall be not in excess of $2,500. 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).