Sutter v. Commissioner

21 T.C. 170 (T.C. 1953)

[*170] Respondent determined deficiencies in petitioners' income taxes of $ 1,571.04 and $ 2,870.34 for the years 1947 and 1948, respectively. [*171] Petitioners have conceded certain adjustments. The remaining questions are whether petitioners are entitled to deduct certain alleged promotional expenses for the years in controversy and depreciation on a cabin cruiser for the year 1948.

FINDINGS OF FACT.

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

Richard A. Sutter, hereinafter called petitioner, is an individual residing in University City, Missouri. He filed his Federal income tax returns individually for the year 1947 and jointly with his wife, Elizabeth H. Sutter, for the year 1948, with the collector [**2] for the first district of Missouri.

During the years in controversy, petitioner was engaged in the specialized practice of industrial medicine. His principal office is in St. Louis, Missouri, where he conducts the Sutter Industrial Surgical Clinic. During the years 1947 and 1948, he employed on his staff a full-time physician, a part-time physician, and at least two registered nurses and two secretaries. He also consulted with outside physicians for reference diagnosis. Due to the nature of his practice he did not secure patients by referrals from other doctors and patients, nor does his private practice involve any substantial number of patients who consult him of their own volition. Petitioner's clients are the commercial and industrial organizations which employ his patients or the insurance companies which insure such organizations. His fees are paid by these clients.

Petitioner's investment in the physical properties of his clinic is valued at about $ 29,000.

Petitioner sent flowers to nurses groups, hospitals, and Christmas parties; gifts to his medical associates; and candy and tickets to the Police Relief Association benefit, to telephone operators, elevator operators, [**3] secretaries, and parking lot attendants.

Petitioner attended numerous luncheons of the St. Louis Chamber of Commerce and the Hospital Council of St. Louis. The deductions claimed for these luncheons represent the cost of his own meal.

On numerous occasions petitioner entertained other physicians and their wives.

Petitioner's wife accompanied him on many occasions when he entertained.

Petitioner as president of the St. Louis County Medical Society had obligations to entertain due to his position and did entertain because of his position.

Petitioner deducted the entire cost of a hunting trip which he took in 1948 as business expense.

[*172] Petitioner deducted the cost of printing copies of an article written by him concerning industrial surgery which was mailed to people all over the world. Some of the recipients included doctors and professional men.

The expenditures made by petitioner in entertaining and otherwise promoting and furthering the operation of his clinic were directed to persons who were so situated in commercial organizations and insurance companies as to be able to promote the supplying of the industrial needs of these employers or insurance carriers by petitioner; [**4] some expenditures were also incurred and directed in the same manner to other persons who could assist and enhance his practice as an industrial physician.

Petitioner purchased a cabin cruiser on April 6, 1948. The cost of the cruiser with subsequent improvements added during 1948 totaled $ 17,327.32.

Petitioner was accompanied on yachting trips by his wife and three children. His mother and brother, as well as his accountant and wife, have been aboard as guests. Other physicians have been aboard as guests. In addition there were a great many social guests who were aboard for no business purpose.

Petitioner was a member of the Harbor Point Yacht Club in 1948 and included dues payments in his deduction for promotion expense.

Petitioner claimed an expense of entertainment and gifts in the tax year 1947 in the sum of $ 1,608.60, conceding that $ 1,025 of the total claimed deduction of $ 2,633.60 in his 1947 return as previously filed should be restored to net income for the reason that a $ 1,000 contribution had been refunded to him subsequent to the filing of his 1947 return and that $ 25 claimed had been improperly included.

On their joint income tax return for 1948 petitioners [**5] claimed deductions of $ 3,754.72 for "promotional" expense and $ 1,730 for depreciation on the cruiser. The entire amounts were disallowed by the Commissioner.

The deduction for "promotional" expense in 1948 includes $ 1,835.75 which was expended for the operation and maintenance of the cruiser.

Expenditures for entertainment on board petitioner's cruiser in the year 1948 amounted to $ 782.

Petitioner claimed the expenditure in 1948 of $ 1,038.97 promotional expenses, gifts, and all entertainment, other than occasioned on his cruiser, of clients and other persons who might assist in promoting his business accounts as an industrial physician.

Some of petitioner's claimed expenses were ordinary and necessary to his business. Some others were made for the purpose of promoting the accounts of his industrial practice.

Twenty-five per cent of the amounts now claimed as expenditures for entertainment and for cruiser expense and depreciation were ordinary [*173] and necessary expenses of petitioner's trade or business during the years in controversy.

OPINION.

While the sole issue is deductibility as business expense of a number of items claimed by petitioner, the purposes of the expenditures [**6] and the grounds of their disallowance place them in separate categories and require individual disposition for each class. Of the seven types of items for which deductions were claimed we have concluded that five should be disallowed entirely and that the other two are deductible only to a limited extent.

Running through most of the contested items is the stubborn thread of a single problem which has never apparently been squarely and expressly passed upon. Cf., e. g., *James Schulz*, 16 T. C. 401. When a taxpayer in the course of supplying food or entertainment or making other outlays customarily regarded as ordinary and necessary includes an amount attributable to himself or his family, such as the payment for his own meals, is that portion of the expenditure an ordinary and necessary business expense on the one hand or a nondeductible personal item on the other?

It seems to us that while each situation will of course be governed by its individual facts the general principle necessarily emerges somewhat as follows: The cost of meals, entertainment, and similar items for one's self and one's dependents, at least if not incurred while away from home [**7] in the pursuit of one's business, see section 23 (a) (1) (A), Internal Revenue Code, is ordinarily and by its very nature personal expenditures forbidden deduction by section 24 (a) (1). The presumption, no doubt rebuttable, must accordingly arise that such costs are nondeductible. In addition to the burden imposed by the necessity of overcoming respondent's determination we think the presumptive nondeductibility of personal expenses may be overcome only by clear and detailed evidence as to each instance that the expenditure in question was different from or in excess of that which would have been made for the taxpayer's personal purposes. Where such evidence is absent we conclude that even under the *Cohan* [1] rule no amount whatever for such expenses may properly be claimed.

1 *Cohan* v. *Commissioner*, (C. A. 2) 39 F. 2d 540.

The items which we think must be wholly disallowed are those claimed for gifts to elevator operators, parking lot attendants, hospital employees, and others [**8] in similar occupations; the amount spent for a hunting trip as to which there is inadequate proof of a direct connection with petitioner's business income, *Louis Boehm*, 35 B. T. A. 1106; gifts to various medical associates; and the expense of publishing an article circulated by petitioner to a miscellaneous group of recipients even though some may have included those with whom [*174] petitioner had business relations. As to all of these items we have found as facts on this subject all those requested by petitioner. See Rules of Practice before the Tax Court of the United States, Rule 35 (e) (3). On the basis of those findings it is impossible to conclude that petitioner has borne the burden of showing in what respect and to what if any extent these items contributed to the earning of his income. The deductions must accordingly be denied. *Louis Boehm, supra; James Schulz, supra; Reginald Denny*, 33 B. T. A. 738; *Home Guaranty Abstract Co.*, 8 T. C. 617; *Walter J. Munro*, 19 B. T. A. 71. Cf. *E. E. Dickinson*, 8 B. T. A. 722. [**9]

The deduction for the cost of lunches was apparently almost entirely payment for petitioner's own meals when he attended such functions as meetings of the Chamber of Commerce. There is no evidence that these costs were any greater than expenditures which petitioner would have been required to make in any event for his own personal purposes. They must consequently be disallowed.

The remaining two items consist of entertainment expenses and the cost of maintenance and depreciation of a cabin cruiser belonging to petitioner. While this proceeding is distinguishable from *Cohan* v. *Commissioner, supra*, in that the total amount of the expenses is not conjectural but has either been stipulated or shown by adequate evidence, we nevertheless regard an allocation as required because it is evident that only a part of these conceded expenditures may be characterized as the ordinary and necessary consequences of petitioner's trade or business. To some extent they were entirely personal in nature being on the one hand costs of entertainment for petitioner and his family and on the other partly social occasions. In some degree they were

also apparently a means [**10] of enhancing petitioner's prestige and the future possibility of expanding his clinic business so as to be the means of creating a capital asset comparable to good will. See 4 Mertens, Law of Federal Income Taxation, p. 367, and cases cited. And how these elements, particularly the former, may be separated from actual business expenses is not, in spite of petitioner's careful record-keeping, to any extent discoverable from the evidence. This inexactitude is, in the language of the *Cohan* case, the result of petitioner's own conduct. Because of these considerations we have found that the amounts deductible by petitioner as ordinary and necessary expenses in the two allowable categories of entertainment and cabin cruiser expenses and depreciation are 25 per cent of those now claimed by him. Cf. *John A. Brander*, 3 B. T. A. 231, with *E. E. Dickinson, supra*. These items are detailed in the record and can readily be recomputed by the parties.

Decisions will be entered under Rule 50.