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## ***Marcell v United States***

8 A.F.T.R.2d 5344

GIBSON, District Judge:

This case is a suit for the recovery of alleged overpayment of income taxes for the taxable year 1952 plus interest. On October 21, 1957, the Commissioner of Internal Revenue assessed income tax deficiencies against the plaintiffs for the year 1952. Payment of the deficiency assessment was made in a series of installments. On May 12, 1959, the plaintiffs filed a timely claim for refund which was disallowed on February 29, 1960. Suit was instituted under 28 U.S.C. Sec. 1346(a)(1) on July 12, 1960. Subsequent to filing suit, Philip Marcell died and Mrs. Marcell, as administratrix, was substituted as a party in his stead, by order of this Court dated March 3, 1961.

It is agreed by the parties to this suit that the issues arising out of the 1952 tax year all relate to various items taken as business expense deductions by the plaintiffs' sole proprietorship, which were disallowed by the Commissioner of Internal Revenue either on the ground that they were personal expenses, or that they should have been capitalized.

### Findings of Fact

1. The plaintiffs' 1952 tax return included income from their sole proprietorship known as Marcell's Motor Express.
2. Mr. and Mrs. Marcell filed their joint tax return for the year 1952 on March 16, 1953.
3. The plaintiffs included \$460.94 as a business expense on a house that was adjacent to Marcell's Motor Express terminal in South Burlington, Vermont. This deduction was disallowed by the Commissioner. However, I find the house was used basically for business purposes; for meetings, for the entertainment of customers, for overnight lodging for Philip Marcell or other out-of-town employees when it was necessary to them in the course of business to remain overnight in Burlington.
4. The plaintiffs claimed \$222.51 spent for the purchase of lumber as a business expense. This lumber was used at the Rutland, Vermont, terminal in making repairs to the dock and in making temporary doors. The Commissioner disallowed this deduction. This being a temporary repair, I find this to be a proper business deduction.
5. The Marcells lived in Hubbardton, Vermont, in 1952 and raised cattle. They included in their tax return \$606.71 spent for grain, having hay baled, and having electrical work done on a barn, all as a business deduction. Philip Marcell and his son, John, were in the cattle business in Hubbardton in 1952. Their purpose was to build a herd of dairy cows.

In this year they received no income from this attempt to build a herd. The milk received was mostly used to raise young cattle. This, I find, is a proper deduction.

6. The plaintiffs donated \$50 to Community Chest and \$50 to the Mary Fletcher Hospital in Burlington. The donation to Community Chest was a charitable donation. The donation to the Mary Fletcher Hospital was a business expense because the chairman of the drive was a leader in the community and the owner of a supply company which was a customer or a potential customer of the plaintiffs' company. I find the \$50.00 contribution to the hospital a business expense; to the Community Chest, a charitable contribution.
7. Prior to 1952, Marcell's Motor Express paid a yearly legal services retainer of \$1000 to the firm of Black, Wilson and Hoff. of Burlington, Vermont. In 1952, the company was billed \$2000 for services additional to the \$1000 retainer. In this year the law firm created a trust for the Marcell children. This Court finds that this was a personal expense and this Court values this service at \$500. This amount is not a proper business expense. However, in that same year the law firm did a complete study of the advisability of undertaking a complete business organization change. This work is valued by this Court at \$1500 and was a proper business deduction.
8. The plaintiffs spent \$1371.84 in connection with the acquisition of a Canadian operating permit. The plaintiffs contend this permit was temporary in nature and expenses connected with acquiring the permit were deductible in the year incurred.

The Government contends the permit was, for practicable purposes, permanent and that the expenses should have been capitalized.

I find that it was necessary in the plaintiffs' business to have such a permit; that it had to be renewed each year. It appears that if a trucking company is charged with any infraction of law or regulations in a year, the renewal of a permit is in great jeopardy. It seems impractical to believe that a large trucking company would go through but few scattered years without some employee's violating some law or regulation. I find this expense - mostly incurred as legal expense for a Canadian law firm in this matter - is a proper business deduction.

9. Heating materials costing \$665 were purchased and the plaintiffs deducted this expense on their tax return. This Court finds that this item has a useful life in excess of one year and was not a proper business deduction.
10. The plaintiffs also purchased air horns and gas tanks for an amount of \$715.40. The air horns have a very short life span and are a proper business expense. The air horns are valued at \$320. The gas tanks have a much longer life span and are not a proper business deduction.

#### Conclusions of Law

This Court concludes, as a matter of law, that the following expenses were proper business deductions and should have been allowed by the Commissioner:

1. House payments on the house adjacent to the South Burlington terminal. Amount \$460.94.
2. Cost of lumber used for repairs at Rutland terminal. Amount \$222.51.
3. Farm expenses incurred for the cattle business at Hubbardton, Vermont. Amount \$606.71.
4. Donation of \$50 to the Mary Fletcher Hospital in Burlington. Amount \$50.00.
5. Additional legal fee of \$1500 for the business organizational study. [\*6] Amount \$1500.00.
6. The amount spent in acquiring the Canadian operating permit for the year 1952. Amount \$1,371.84.
7. The cost of the air horns purchased in 1952. Amount \$320.00.

I further conclude, as a matter of law, that the following expenses were not proper business deductions and that the Commissioner was correct in disallowing them:

1. Donation of \$50 to the Community Chest in Burlington, Vermont. Amount \$50.00.
2. The additional legal fee of \$2000 was incurred with \$1500 for business purposes and \$500 for personal services. The \$500 is not a proper business expense. Amount \$500.00.
3. The heating materials costing \$665 for the South Burlington terminal. Amount \$665.00.
4. The cost of the gas tanks purchased in 1952. Amount \$395.40.

#### Judgment Order

It is hereby Ordered that the United States of America return the overpayment of taxes paid by the plaintiffs, plus interest and costs thereon, as computed by the Government, all in accordance with the views expressed herein. If such repayment is not computed and completed within thirty days, this Court reserves the right to make the computation and to enter a money judgment.