COMMENTS

TRAVEL EXPENSES OF A BUSINESSMAN'S WIFE: WIFELY FUNCTIONS AS A BUSINESS EXPENSE

United States v. Disney, ____ F.2d ____ (9th Cir. 1969)

Plaintiffs, Mr. and Mrs. Roy Disney, excluded from their joint return amounts received from his employer, Walt Disney Productions, as reimbursement for her travel expenses. As president, chairman of the board and member of the corporation's executive committee, Mr. Disney traveled extensively as a good-will ambassador. In accordance with the company's policy which "virtually insisted on the wive's [*sic*] presence on trips taken by executives where it is believed their presence would enhance the company's 'image', or would otherwise promote its interest,"[1] Mrs. Disney accompanied her husband on four trips, three of which were abroad, in 1962 and 1963. The Tax Commissioner disallowed the claimed exemption, asserting that for Mrs. Disney the trips were for pleasure rather than business. In a suit to recover deficiency payments, the district court held for the taxpayer.[2] The United States appealed.

Held: The accompaniment of an executive's wife merely to serve as his wife at business engagements and social gatherings may qualify as a bona fide business purpose under Sections 162 and 212 of the Internal Revenue Code if properly related to corporate sales and goodwill promotion.[3] Affirmed.

---

1. United States v. Disney, 24 Am. Fed. Tax R.2d 5123, 5124 (9th Cir. 1969).

2. Disney v. United States, 267 F. Supp. 1 (C.D. Cal. 1967).

3. The Ninth Circuit decision directed Disney to include the reimbursements in his gross income under Section 61(a), and then deduct the amount as a business expense under Section 162(a). No mention was made of Treasury Regulation 1.162-17(b)(1) (1962), stating that:

> The employee need not report on his tax return . . . expenses for travel, transportation, entertainment and similar purposes paid or incurred by him solely for the benefit of his employer . . . for which the employee is paid through . . . reimbursements. . . .

Although Mrs. Disney was not an employee, Treasury Regulation 1.162-17 would arguably apply to the expenses of Roy Disney, as an employee, for the expenses of his wife. Nevertheless, the question before the court was whether the reimbursements resulted from ordinary, necessary and reasonable traveling expenses incurred by the corporation through an employee in the pursuit of business. *See* INT. REV. CODE of 1954, § 162.

The Regulations provide that travel expenses incurred by a wife accompanying her husband-employee are ordinary and necessary within the meaning of Section 162 only if it can be adequately shown that her presence on the trip had a "bona fide business purpose." Treas. Reg. § 1.162-2(c) (1958). *See also* Treas. Reg. § 1.162-2(c) (1958) and Treas. Reg. § 1.162-2(b)(2) (1958).

The emphasis of the *Disney* holding is not directed at particular tasks or services performed by the wife, but at contributions of a "wifely" nature.[4] Mrs. Disney attended social gatherings, press conferences, photography sessions, luncheons and other primarily social engagements. Much of her time was spent shopping, sight-seeing or visiting. In short, Mrs. Disney did little more than travel with her husband as his wife, joining him at social functions related to the corporation's business. A review of other cases dealing with travel expenses of wives reveals a significant number of instances in which the activitives of the wife were similar to those of Mrs. Disney, but in which no deduction to the corporation, or exemption for reimbursement was allowed.[5] To explain Disney, they must be distinguished.

As indicated by the *Disney* court, the primary focus under section 162 of the Code is whether the expenditures are necessary: the wife's activities must be analyzed in relation to her husband's business activities.[6] If the husband's responsibilities include substantial and intimate social contacts, and if it can be adequately demonstrated that his wife's presence enhances these contacts, her presence is for the benefit of the business, even though clearly "personal" in character.

Both *Disney* and its predecessor, *Warwick v. United States*,[7] indicate that such a relationship is found only under "unusual circumstances." Even for those executives who appear to qualify the burden of proof

4. United States v. Disney, 24 Am. Fed. Tax R.2d 5123, 5125 (9th Cir. 1969).

5. Those cases denying the deduction include: United States v. Gotcher, 401 F.2d 118 (5th Cir. 1968); Sheldon v. Commissioner, 299 F.2d 48 (7th Cir. 1962); Silverman v. Commissioner, 253 F.2d 849 (8th Cir. 1958); Kloppenburg v. United States, 17 Am. Fed. Tax R.2d 507 (S.D. Ill. 1965); William H. Leonhart ¶ 68,098; P-H Tax Ct. Mem.; Joy L. Zubrod ¶ 67,204; P-H Tax Ct. Mem.; L.R. Schmaus Co., Inc. ¶ 67,197; P-H Tax Ct. Mem.; William H. Johnson ¶ 66,164; P-H Tax Ct. Mem.; Francis X. Heidl ¶ 64,007; P-H Tax Ct. Mem.; Challenge Mfg. Co., 37 T.C. 650 (1962); Alabama-Georgia Syrup Co., 36 T.C. 747 (1961) (Acq.); John A. Guglielmetti, 35 T.C. 668 (1961); William E. Reisner, 34 T.C. 668 (1960); Frederick C. Moser ¶ 59,025; P-H Tax Ct. Mem.; Ralph E. Duncan 30 T.C. 386 (1958); Cornelius Vanderbilt, Jr. ¶ 57,235; P-H Tax Ct. Mem.; L.L. Moorman, 26 T.C. 666 (1956); Axel S. Stokby ¶ 53,236; P-H Tax Ct. Mem.; Walter Schmidt, 11 B.T.A. 759 (1925). Cases allowing deductions include: United States v. Disney, 24 Am. Fed. Tax R.2d 5123 (9th Cir. 1969); Peoples Life Ins. Co. v. United States, 373 F.2d 924 (Ct. Cl. 1967); Poletti v. Commissioner, 13 Am. Fed. Tax R.2d 1252 (8th Cir. 1964); Warwick v. United States, 236 F. Supp. 761 (E.D. Va. 1964).

6. "The critical inquiries are whether the dominant purpose of the trip was to serve her husband's business purpose in making the trip and whether she actually spent a substantial amount of her time in assisting her husband in fulfilling that purpose." United States v. Disney, 24 Am. Fed. Tax R.2d 5123, 5127 (9th Cir. 1969).

7. 236 F. Supp. 761 (E.D. Va. 1964).

may be heavy. The narrow scope of *Disney* stems from the Code's presumption against deductions for family expenses,[8] and from the several cases indicating that services rendered by a wife on a trip are generally incidental to the husband's business affairs and are intended primarily for the convenience of the husband. If the wife serves as a nurse[9] or performs occasional clerical tasks[10] such as making appointments or arranging a business contact,[11] the courts have uniformly held her duties incidental. In these cases, the wife supplies no greater assistance "than a wife, with a reasonable interest in her husband's business affairs, would normally provide."[12] Nor is it sufficient for the taxpayer merely to show that the company's policy requires the wife's presence.[13] All of these cases demonstrate how closely the courts adhere to a "presumption" of nondeductability, regardless of how harsh this may be to the taxpayer.[14]

To distinguish *Disney* and its precursor *Warwick v. United States,* from these cases, they must be analyzed on their facts. In *Warwick* the taxpayer, as vice-president and member of the board of directors, acted in a sales capacity for Universal, a tobacco company with customers throughout the world. He worked to establish goodwill with customers who placed large orders crucial to the corporation's financial success.

---

8 INT. REV. CODE of 1954, § 262.

9 *See* Joy L. Zubrod ¶ 67,204; P-H Tax Ct. Mem.; William E. Reisner, 34 T.C. 1122 (1960); George W. Megeath, 5 B.T.A. 1274 (1927). *Contra,* Allenburg Cotton Co., Inc., 7 Am. Fed. Tax R.2d 368 (W.D. Tenn. 1960).

10 William H. Johnson ¶ 66,164; P-H Tax Ct. Mem.; *accord,* L.L. Moorman, 26 T.C. 666 (1956).

11 Alabama-Georgia Syrup Co., 36 T.C. 747 (1961) (Acq.); Axel S. Stokby ¶ 53,236; P-H Tax Ct. Mem.

12 Frederick C. Moser ¶ 59,025; P-H Tax Ct. Mem.

13 To hold otherwise permits the taxpayer-corporation to define for itself the scope of Section 162. A long-standing company policy is, however, clearly a factor considered by the courts. *See* United States v. Disney, 24 Am. Fed. Tax R.2d 5123, 5127 (9th Cir. 1969); Warwick v. United States, 236 F. Supp. 761 (E.D. Va. 1964); *cf.* Commissioner v. Motch, 180 F.2d 859 (6th Cir. 1950).

14 The *Heidl* case offers a good illustration of the harshness of the presumption. Heidl was an international shipping agent whose wife, a qualified but non-practicing bookkeeper, accompanied him to Europe on business. As a major stockholder of her husband's business, her stock having been bought with her own funds, she had served as an active director since incorporation, often consulting with her husband, other officers and employees. In addition, she personally corresponded with agents and customers. Nevertheless, the court refused to accept her presence on the European trip as necessary, apparently influenced in part by her lack of salary, her attendance on sight-seeing trips and the need to scrutinize closely exclusively family businesses. Francis X. Heidl ¶ 64,007; P-H Tax Ct. Mem. *But see* Price, *Traveling With Your Wife May Be Taxing* 28 FED. B.J. 75, 84-85 (1968).

Many contacts with these clients involved social affairs where wives were customarily present.[15] As a consequence, Mrs. Warwick assisted her husband in establishing "the close friendly intimate relationship with the customers that Universal required of her husband."[16] At no time did she plan the itinerary, sit in on negotiations, quote prices or describe the market, although she stayed near her husband while he transacted business. She entertained customers and their wives, occasionally toured factories and did a minor amount of typing for her husband.

From an objective point of view, Mrs. Warwick's activities appeared identical to the activities of wives who served as hostesses and entertained potential customers in other cases which denied favorable tax treatment.[17] The *Warwick* court distinguished these cases by examining not only what Mrs. Warwick did, but what she did not do. She was never a tourist in the usual sense. Her time was not her own since business required moving from place to place on short notice. Nor did she accompany her husband to the Far East, since Universal found a wife's presence there disadvantageous. The court also gave some weight to the facts that the board of directors formally approved the policy of reimbursement for a wife's expenses on European trips, and to the testimony of the corporation's president that Mrs. Warwick contributed measurably to the success of her husband and the image of the company. Finally, the court emphasized that this was neither a single trip, nor series of trips, but a continuing plan of travel both for the husband and the wife.[18]

---

15. In *Warwick*, the court noted that the number of clients in Europe was decreasing with the amount of sales per customer increasing as the number of competitors in the foreign market contracted. In *Disney*, the court noted that the film industry demanded a special feeling of fellowship among showpeople. Both courts interpreted these business facts as demanding an unusual number of reciprocal social contacts by the corporate representatives.

16. Warwick v. United States, 236 F. Supp. 761, 765 (E.D. Va. 1964).

17. *See* William H. Leonhart ¶ 68,098; P-H Tax Ct. Mem.; L.R. Schmaus, Co., Inc. ¶ 67,197; P-H Tax Ct. Mem.; *cf.* Sheldon v. Commissioner, 299 F.2d 48 (7th Cir. 1962); Francis X. Heidl ¶ 64,007; P-H Tax Ct. Mem.; Alabama-Georgia Syrup Co. 36 T.C. 747 (1961) (Acq.); John A. Guglielmetti, 35 T.C. 668, 671 (1961); Frederick C. Moser ¶ 59,025; P-H Tax Ct. Mem.; Cornelius Vanderbilt, Jr. ¶ 57,235; P-H Tax Ct. Mem.

18. A subsequent case, *Peoples Life Ins. Co. v. United States*, 373 F.2d 924 (Ct. Cl. 1967), utilized a method of analysis similar to *Warwick* in deciding that payment of expenses incurred at an annual convention by an insurance company's agents and their wives did not constitute income to the employees. The *Peoples* court held that the company's policy of bringing the wives of its agents to its conventions served a valid business purpose. To reach its conclusion, the court relied on the employer's ample documentation of the important role of the wife in her husband's and, consequently, the company's success. Before the husband was hired, the wife was interviewed

To reach its result in *Disney*, the court found that as a high-ranking executive, Mr. Disney's job required attendance at various meetings, conferences, conventions and screenings of company products, each involving substantial social contact. In this regard, Mr. Disney was expected to "promote the public image of the company as one engaged in family-type entertainment and to cultivate close and cordial relationships between his company and the exhibitors and other executives with whom the company dealt throughout the world."[19] The court noted that, to a large extent, Mr. Disney was a "celebrity" of the company.[20]

In *Disney* and *Warwick*, the husband-employees were high-ranking corporate officials, choosing to follow a corporate policy which they were free to disregard. Both transacted little actual business, such as drafting contract agreements or closing orders and delivery dates; each served primarily as a good-will ambassador for the company. They found from experience that their wives were an asset to them on these trips. Moreover, the taxpayers participated in a corporate program of continual traveling instead of infrequent trips. Both were employed in corporations in which good-will was of special importance. Although *Disney* and *Warwick* emphasized that the courts reached their conclusions in part from the "unusual position" that these taxpayers occupied in the business world,[21] the decisions suggest that in the future, corporate executives need not furtively assign to their wives tasks of a business nature merely to solidify a claimed exemption or deduction,

---

and briefed on the insurance business. Afterward, training and educational material was specifically directed to her. At the convention, the wives participated in the meetings. This special effort on the part of the corporation to integrate the wives into their husband's business responsibilities was considered controlling. As in *Disney* and *Warwick*, the *Peoples* decision grants legal significance to an acknowledged business fact: a businessman's wife, merely by her presence, can exert significant influence upon her husband's business dealings. *See also* Patterson v. Thomas, 289 F.2d 108, 114-21 (5th Cir. 1961) (dissent); Kloppenburg v. United States, 17 Am. Fed. Tax R.2d 507 (S.D. Ill. 1965) (jury allowing deductions reversed on appeal by judgment notwithstanding the verdict).

19 United States v. Disney, 24 Am. Fed. Tax R.2d 5123, 5126 (9th Cir. 1969).

20 "[E]xecutives identified with the company are frequently in the public eye . . . ." *Id.* at 5123.

21 United States v. Disney, 24 Am. Fed. Tax R.2d 5123, 5126 (9th Cir. 1969); Warwick v. United States, 236 F. Supp. 761, 767 (E.D. Va. 1964).

if the socializing of their wives is both "appropriate"[22] and sufficiently related to their employment responsibilities.[23]

22. "The only reason she went was because of her husband's business. Her trip was directly attributable to her husband's business, and it was appropriate to the conduct of his business. It assisted him in his business and assisted in the production of his income." Warwick v. United States, 236 F. Supp. 761, 767 (E.D. Va. 1964).

23. *See also* Treas. Reg. § 1.274-2(d)(4) (1964) which in part provides:

> Thus, if a taxpayer and his wife entertain a business customer and the customer's wife under circumstances where the entertainment of the customer is considered directly related to the active conduct of the taxpayer's trade or business . . . the portion of the expenditure allocable to both wives will be considered associated with the active trade or business . . . .

For those who suggest that Section 162 of the Code intends, at least in part, to provide economic equivalency between taxpayers similarly situated, it seems pertinent to analyze why a different standard is applied by the courts to the taxpayer traveling overnight and to the taxpayer commuting to the city for an evening at a favorite nightspot.