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Although the United States Supreme Court has not expressly ruled on the question, it appears that a decree of adoption, rendered with proper jurisdiction and without fraud on the court, is entitled to normal full faith and credit protection for all purposes.³¹ But such a judgment has no constitutional claim to a more conclusive or final effect in a sister state than in the rendering state.³² Before granting full faith and credit to the decree, a sister state may demand proof that the adoptions were valid under the law of the state granting the adoption.³³

Since the North Carolina court has never had occasion to interpret the word "residence" in our adoption statute, it would be unfortunate if a sister state should seize upon the decision in *Martin* as a basis for refusing to give full faith and credit to a child adopted by a serviceman in North Carolina. Until either the United States Supreme Court or the North Carolina Supreme Court interprets residence in regard to adoption, an attorney would be well advised to get into the record evidence sufficient to support a finding of bona fide domicile of the adopting parent. And in cases where it is clear that the adopting parents are not domiciled in North Carolina, it would seem advisable for the attorney to inform them of the possible "pitfalls" that they might face later.

C. EDWIN ALLMAN, JR.

Federal Income Taxation—Deductibility of Meal and Lodging Expenses as Medical Care

It is probable that during any given year a large number of people in the United States will encounter sickness or injury and will be advised by their physician to take a trip entirely for medical treatment. Since certain medical expenses are deductible for income tax purposes,¹ there arises a question as to what trip expenses may be properly classified as a medical care deduction. This is especially true when the taxpayer is *not* confined to a hospital or other institution and is accompanied on the trip by his wife and, possibly,

Smith, 94 Ind. App. 619, 180 N.E. 188 (1932); *Heirich v. Howe*, 50 N.M. 90, 171 P.2d 312 (1946); *Cribbs v. Floyd*, 188 S.C. 443, 199 S.E. 677 (1938).

³¹ I RABEL, *THE CONFLICT OF LAWS: A COMPARATIVE STUDY* 645 (1945); *RESTATEMENT, CONFLICT OF LAWS* § 143 (1934).

³² *New York ex rel. Halvey v. Halvey*, 330 U.S. 610, 614 (1947).

³³ *Welch v. Jacobsmeyer*, 216 La. 334, 43 So. 2d 678 (1949).

¹ INT. REV. CODE of 1954, § 213(a).

his dependents.² Recently two taxpayers brought this precise question to the courts for clarification and received conflicting results.

In *Commissioner v. Bilder*³ the petitioner, who lived in New Jersey, suffered from a long history of heart trouble and was advised by his physician to spend the winter months in a warm climate. Following this advice, the petitioner, his wife and his three-year-old daughter rented an apartment and spent the winter months of 1954 and 1955 in Florida. On his tax returns for these years he took as a medical care deduction the full amount of the apartment rental and his transportation costs. He did not include any deduction for meals. The Commissioner assessed a deficiency for the stated deductions, and the Tax Court reversed. The Tax Court allowed his transportation costs in full but only one-third of the total apartment rentals since it was not shown that the taxpayer needed his family on the trip as a part of the medical treatment. The Court of Appeals for the Third Circuit vacated the judgment of the Tax Court and remanded. The court of appeals approved not only his transportation deduction but *all* of the deduction for apartment rentals, finding that it was necessary for the petitioner's family to accompany him on the trip for proper treatment of the disease.

*Carasso v. Commissioner*⁴ involved a taxpayer who had been stricken by a serious illness that resulted in the removal of a major part of his stomach. On his doctor's recommendation the taxpayer and his wife, in 1956, flew from their home in New York to Bermuda for convalescence. On his tax return for 1956, the taxpayer took a medical care deduction for hotel, meals, transportation and exit tax expenses which he and his wife incurred on the trip. The Tax Court found that his wife's presence was essential and allowed the total deduction claimed with the exception of the expenses for the hotel rental and meals. On appeal by the taxpayer, the Court of Appeals for the Second Circuit affirmed.

The real conflict arising from these cases evolves around the definition of "medical care." The medical care deduction was first introduced in 1942 as section 23(x) of the Code of 1939, and at

² If the taxpayer is an in-patient at a hospital or other qualified institution (as determined by the treasury regulations), it is quite clear that he will be allowed a deduction for the costs of his meals and lodging furnished therein. See Treas. Reg. § 1.213-1(e)(v) (1957).

³ 289 F.2d 291 (3d Cir. 1961), cert. granted, 30 U.S.L. WEEK 3154 (U.S. Nov. 14, 1961) (No. 384).

⁴ 292 F.2d 367 (2d Cir. 1961).

that time the term was broadly defined.⁵ Taken in conjunction with section 24(a)(1) of the 1939 Code,⁶ it was possible to include as extraordinary medical expenses certain expenditures which would normally fall into the category of personal, living, or family expenses. These two sections were interpreted to permit deductions in proper situations for meals and lodging while on a trip for medical reasons.⁷ The Commissioner had acquiesced in this interpretation.⁸

The Internal Revenue Code of 1954 replaced section 23(x) of the 1939 Code with section 213.⁹ It provides an identical definition for medical care except for the specific addition of transportation expenses incurred in connection with medical care. In addition the 1954 Code replaced section 24(a)(1) of the 1939 Code with section 262,¹⁰ which provides in effect that no deduction can be taken for personal, living, or family expenses unless expressly provided by the Code. Unlike its predecessor, section 262 makes no mention of extraordinary medical expenses being an exception to this rule.

⁵ INT. REV. CODE of 1939, § 23(x)(2), added by ch. 619, 56 Stat. 825 (1942), provided: "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)."

"The term 'medical care' is broadly defined to 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. It is not intended, however, that a deduction should be allowed for any expense that is not incurred primarily for the prevention or alleviation of a physical or mental defect or illness." S. REP. No. 1631, 77th Cong., 2d Sess. 95-96 (1942).

⁶ INT. REV. CODE of 1939, § 24(a)(1), as amended, ch. 619, 56 Stat. 826 (1942): "In computing net income no deduction shall in any case be allowed in respect of—(1) Personal, living, or family expenses, except extraordinary medical expenses deductible under section 23(x)"

⁷ *Embry's Estate v. Gray*, 143 F. Supp. 603 (W.D. Ky. 1956), *appeal dismissed on motion of appellant—District Director of Internal Revenue*, 244 F.2d 718 (6th Cir. 1957); *Stanley D. Winderman*, 32 T.C. 1197 (1959); *Bertha M. Rodgers*, 25 T.C. 254 (1955); *L. Keever Stringham*, 12 T.C. 580 (1949), *aff'd*, 183 F.2d 579 (6th Cir. 1950); *Edward A. Havey*, 12 T.C. 409 (1949).

⁸ Treas. Reg. 111, § 29.23(x)-1 (1943); Rev. Rul. 55-261, 1955-1 CUM. BULL. 307.

⁹ INT. REV. CODE of 1954, § 213(e): "Definitions—for purposes of this section—(1) The term 'medical care' means amounts paid—(A) 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), or (B) for transportation primarily for and essential to medical care referred to in subparagraph (A)."

¹⁰ INT. REV. CODE of 1954, § 262.

The Senate and House Committee Reports on section 262 indicate that no substantive change in section 24(a)(1) was intended to be made.¹¹ In connection with section 213(e), which includes the definition for medical care, the House and Senate Committee Reports indicate that a new definition of medical care was intended, and that this new definition should include regulations already in effect plus a deduction for transportation costs incurred on a trip prescribed for health, but "not the ordinary living expenses incurred during such a trip."¹² They specifically pointed out that no deduction was to be allowed for meals and lodging while on a trip for medical purposes. An example was given which contemplated a fact situation similar to that found in the two principal cases.¹³

The Treasury Regulations which correspond to the aforementioned two sections of the Code merely affirm the intent shown in the committee reports. The regulations pertaining to section 262 point out that certain items of a personal, living, or family nature are deductible under some sections of the Code (section 213 is one of those listed) but only to the extent expressly provided under the particular section and the regulations to that section.¹⁴ The regulations under section 213(e) of the Code provide that the cost of any meals and lodging while away from home receiving medical treatment, except in an institution, shall not be a deductible expense. However, the cost of transportation for such a trip essential to the rendition of medical care is considered an expense paid for medical care.¹⁵

Generally, when the courts are called upon to interpret statutes, the language of the statutes is construed "so as to give effect to the

¹¹ S. REP. No. 1622, 83d Cong., 2d Sess. 255 (1954); H.R. REP. No. 1337, 83d Cong., 2d Sess. A65 (1954).

¹² S. REP. No. 1622, 83d Cong., 2d Sess. 35 (1954); H.R. REP. No. 1337, 83d Cong., 2d Sess. 30 (1954).

¹³ "The deduction permitted for 'transportation primarily for and essential to medical care' clarifies existing law in that it specifically excludes deduction of any meals and lodging while away from home receiving medical treatment. For example, if a doctor prescribes that a patient must go to Florida in order to alleviate specific chronic ailments and to escape unfavorable climatic conditions which have proven injurious to the health of the taxpayer, and the travel is prescribed for reasons other than the general improvement of a patient's health, the cost of the patient's transportation to Florida would be deductible but not his living expenses while there." S. REP. No. 1622, 83d Cong., 2d Sess. 219-20 (1954); H.R. REP. No. 1337, 83d Cong., 2d Sess. A60 (1954).

¹⁴ Treas. Reg. § 1.262-1(c) (1958).

¹⁵ Treas. Reg. § 1.213-1(e)(iv) (1957).

intent of Congress."¹⁶ It is presently the thought that the proper meaning "can only be derived from a considered weighing of every relevant aid to construction."¹⁷ The Supreme Court has further said that "words are inexact tools at best, and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how 'clear the words may appear on superficial examination.'"¹⁸ This trend of thought has been extended to tax cases, and it is no longer the rule that all doubts are to be construed in favor of the taxpayer.¹⁹

In the *Bilder* case the Tax Court refused to consider the congressional intent of section 213 because it felt that the section was virtually the same as section 23(x), except for the reference to transportation expenses.²⁰ In its opinion the Tax Court cited previous cases²¹ decided by it on this question under section 23(x) of the 1939 Code and held that these prior decisions governed the instant case. However, the court failed to recognize that in each case cited as being pertinent, section 24(a)(1) of the 1939 Code was discussed as being necessarily read in conjunction with section 23(x) in order to provide deductions for meal and lodging expenses in proper cases.²² Thus it seems that the Tax Court made two basic errors: (1) it failed to look to the legislative history of section 213; and (2) it failed to take into consideration the fact that section 262 must be read together with section 213 in order to properly consider the question presented in the principal case.

¹⁶ *United States v. American Trucking Ass'ns*, 310 U.S. 534, 542 (1939).

¹⁷ *United States v. Dickerson*, 310 U.S. 554, 562 (1939). See also *Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp.*, 348 U.S. 437, 444 (1955). Earlier decisions invoked the "plain meaning rule" and would not look to legislative history where the terms of the statute were clear. See, e.g., *United States v. Hartwell*, 73 U.S. (6 Wall.) 385, 396 (1868).

¹⁸ *Harrison v. Northern Trust Co.*, 317 U.S. 476, 479 (1942).

¹⁹ *White v. United States*, 305 U.S. 281, 292 (1938).

²⁰ *Robert M. Bilder*, 33 T.C. 155, 158 (1959). In a previous case the court did consider the congressional committee reports and stated: "[T]he committee reports . . . clearly show a congressional intent to codify the preexisting [*sic*] concepts of medical care." *Frank S. Delp*, 30 T.C. 1230, 1235 (1958). This was done in spite of the fact that the reports said a new definition for "medical expenses" was intended. The new definition would not have affected that particular case, but it would play an important role in the case now under consideration.

²¹ *L. Keever Stringham*, 12 T.C. 580 (1949); *Edward A. Havey*, 12 T.C. 409 (1949).

²² *L. Keever Stringham*, *supra* note 21, at 583-84; *Edward A. Havey*, *supra* note 21, at 411-12. See also *Bertha M. Rodgers*, 25 T.C. 254, 259 (1955).

When the *Bilder* case reached the court of appeals, the majority, like the Tax Court, did not discuss section 262. In the opinion of the dissenting judge this was pointed out as being their "fundamental mistake."²³ The majority, however, did consider the committee reports accompanying section 213, but they drew the conclusion that the reports were ambiguous and made for confusion, not clarification. The majority felt that if Congress had wanted to limit the deduction as the Commissioner contended, they should have done so in clear and express terms. In the absence of this unequivocal language in the statute itself, the court said:

[S]ince Section 213(a), (e)(1)(A) of the 1954 Code is a re-enactment of Section 23(x) of the 1939 Code, and the courts (and the Commissioner) over a twelve year period had construed Section 23(x) to permit allowance of lodging and meals as "medical expenses" where they were incurred as "medical care," "the long and well-settled construction" of Section 23(x), plus its re-enactment without change of "the established interpretation" provide "most persuasive indications" that the judicial construction "has become part of the warp and woof" of Section 213.²⁴

In the *Carasso* case the Tax Court modified the position it took in the *Bilder* case to the extent that it disapproved its own failure to examine the legislative history of section 213.²⁵ However, the Tax Court still failed to mention section 262, and it refused to express an opinion whether or not meals and lodging would be deductible if the circumstances were different.²⁶ The court of appeals noted the change in section 262 from that of 24(a)(1), and the similarity between section 213 and 23(x). The court then questioned whether these changes indicated an intent on the part of Congress to change the interpretation applied under the 1939 Code. The court stated that the language of these sections really did not conclusively answer this question and that a resort to the committee reports was necessary. By an examination of these reports the court found language which clearly indicated that the intent of

²³ Commissioner v. Bilder, 289 F.2d 291, 307 (3d Cir. 1961).

²⁴ *Id.* at 303.

²⁵ Max Carasso, 34 T.C. 1139 (1960).

²⁶ This decision was handed down before the Third Circuit Court of Appeals handed down its opinion in the *Bilder* case, and two judges dissented.

Congress was to prohibit a deduction for meals and lodging in situations like the one in question.

It is submitted that the preferable construction is that followed by the court in *Carasso* and suggested by the dissenting judge in *Bilder*. Using this rule under the new sections, only transportation costs are deductible while meals and lodging are not. The probable reason for the legislative limitation on the meal and lodging deduction was the abuse of it by taxpayers who were using the provision as a means of obtaining "tax deductible vacations." But it certainly seems that the trips taken by the taxpayers in the two principal cases would fall into a "necessity" category, and that the costs incurred, while of a personal living expense nature, were "extraordinary" medical expenses. Perhaps Congress did, as the majority suggested in the *Bilder* case, become entangled in sweeping terms which prohibited a deduction in cases where the trip was essential to the health of the taxpayer. However, the language of the statutes and of the committee reports is too strong to be subject to judicial construction in favor of the taxpayer, and only Congress by new legislation can correct the non-allowance of this justifiable deduction.

H. ARTHUR SANDMAN

Partnerships—Profit Sharing by Lender

Should a corporation which lends money to another corporation be held a partner of the latter where the loan is secured, the lender is to be repaid the principal and interest and is to share in the borrower's profits? The Fifth Circuit Court of Appeals was faced with this question in *Minute Maid Corp. v. United Foods, Inc.*¹

United Foods, a broker of frozen foods, was an authorized direct buyer of products packaged by Minute Maid Corporation. By receiving notice of price increases a considerable time in advance, United Foods could realize a speculative profit on inventories in addition to substantial volume discounts and allowances if it had sufficient financial resources to buy large quantities. United Foods, not having sufficient funds nor normal credit sources to make such purchases, entered into a written agreement with United States Cold Storage Corporation. The agreement provided: (1) Cold Storage would lend money to United Foods to purchase foods; (2) the purchased

¹ 291 F.2d 577 (5th Cir. 1961).