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its agents pay the named owner or co-owner." In a situation where an estate of one co-owner successfully challenged the right of the other co-owner to take the bonds under the survivorship regulation, the court said: "It seems clear that the federal laws and regulations are not intended to interfere with the positive act of two co-owners of bonds by which one conveys her interest in them to the other."

DORIS R. BRAY

Taxation—Deductibility of Campaign Expenses

Two recent decisions of United States district courts have questioned the soundness of the general rule that campaign expenses incurred by a candidate for public office are not deductible in the computation of federal income tax. In Maness v. United States, \(^1\) In re Hendrickson's Estate, 156 Neb. 463, 476, 56 N.W.2d 711, 719 (1953).


the taxpayer was required by statute\(^3\) to pay a qualifying fee and a political party assessment in order to become a candidate in the party primary; he also incurred expenses in advertising his candidacy. Deduction of the qualifying fee and the party assessment was allowed, but was disallowed for the advertising expenses. \textit{Davenport v. Campbell}\(^4\) involved a statutory qualifying fee and a party assessment. Both were held to be deductible.

The Internal Revenue Code of 1954 does not expressly allow or disallow deduction of campaign expenses incurred by candidates.\(^5\) Such deductions have been attempted as taxes,\(^6\) losses,\(^7\) depreciation,\(^8\) business expenses,\(^9\) and expenses for the production of income.\(^10\) The decisions have turned upon the types of expenditures involved\(^11\) and the relation of the taxpayers to the public office.\(^12\)

\(^5\) The only sections of the Code which refer directly to political campaign expenditures are §§ 162(e)(2)(A) and 271. See note 1 supra.
\(^7\) "There shall be allowed as a deduction any loss sustained during the taxable year .... incurred in a trade or business ...." Int. Rev. Code of 1954, § 165. Campaign expenditures have been contended to be analogous to deductions allowed for worthless securities, losses in the development of new processes, losses in exploring for natural resources and losses incurred in negotiating new contracts. See Brief for Petitioner for Writ of Certiorari, p. 6, McDonald v. Commissioner, 323 U.S. 57 (1944). But in the \textit{McDonald} case Mr. Justice Frankfurter rejected the contention in "short shrift." He reasoned that there was no loss because the taxpayer received exactly what he paid for: "the opportunity to persuade the electors." McDonald v. Commissioner, supra at 61.
\(^8\) "There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion .... of property used in the trade or business ...." Int. Rev. Code of 1954, § 167. In the \textit{McDonald} case the Supreme Court did not refer to the question of whether the expense was a capital outlay, but the Court of Appeals said that "an outlay of this sort is in the nature of a capital item." McDonald v. Commissioner, 139 F.2d 400, 401 (3d Cir. 1943) aff'd 323 U.S. 57 (1944). In Mays v. Bowers, 201 F.2d 401 (4th Cir. 1953), Chief Judge Parker refused to allow the authorization of campaign expenses over the term of office to which the taxpayer was elected.
\(^9\) "There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business ...." Int. Rev. Code of 1954, § 162. See McDonald v. Commissioner, 323 U.S. 57 (1944).
\(^10\) "[T]here shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year—(1) for the production or collection of income; (2) for the management, conservation, or maintenance of property held for the production of income ...." Int. Rev. Code of 1954, § 212. See Davenport v. Campbell, 14 Am. Fed. Tax R.2d 6004 (E.D. Tex. 1964).
\(^11\) Campaign advertising expenses directly incurred and paid by the
The Supreme Court disallowed the deduction of a party assessment, not required by statute, and of advertising expenses incurred by an office holder seeking re-election in *McDonald v. Commissioner.* Section 162, permitting the deduction of business expenses, was held inapplicable because (1) the expenses were not incurred in being a public official but in running for public office, which of itself is not a trade or business; (2) the allowance of a business expense deduction to the office holder seeking re-election could not have been granted to his opponent, who sought to establish himself in a new business, and thus would introduce discrimination in favor of the candidate have not been allowed as a deduction. See *McDonald v. Commissioner,* 323 U.S. 57 (1944); *Mays v. Bowers,* 201 F.2d 401 (4th Cir. 1953); *Maness v. United States,* 15 Am. Fed. Tax R.2d 217 (M.D. Fla. 1965); *George W. Lindsay,* 34 B.T.A. 840 (1936). Political party assessments not required by statute have been allowed as a deduction in *Nichols v. United States,* 63-2 U.S. Tax Cas. ¶ 9823 (N.D. Ga. 1963), vacating 201 F. Supp. 337 (N.D. Ga. 1962), but have been disallowed in the *McDonald* and *Reed,* note 1 supra, cases. Political party assessments required by statute to be paid to the state were allowed in *Davenport* when required by statute to be paid to the party. Filing fees required of candidates by statute were allowed in *Maness* and *Davenport.*

None of the cases allow deduction of contributions to the campaign of another. A candidate seeking re-election stands in a more favorable position in seeking the deduction of his campaign expenses than does his opponent. See *Davenport v. Campbell,* 14 Am. Fed. Tax R.2d 6004 (1964). But see *McDonald v. Commissioner,* supra note 11, at 63. Confusion between the merits of the claimed deduction by candidates and noncandidates has led to the overly broad statement that the deduction of campaign expenses is against public policy. See *Dohan,* *Deductibility of Non-Business Legal and Other Professional Expenses,* N.Y.U. 17TH INST. ON FED. TAX 579, 599, 601 (1958). The public policy argument originated in Charles H. McGlue, 45 B.T.A. 761, 769 (1941). In that case an attorney, not running for office, attempted the deduction of contributions to a political campaign. His theory was that the contributions increased his prestige with the elected officials and that his clients benefited by his preferred position with such officials. The Board of Tax Appeals disallowed the deduction because it believed that expenditures made for the purpose of exerting political influence are contrary to public policy. The Tax Court opinion in *Michael F. McDonald,* 1 T.C. 738, 740-41 (1943), relied on *McGlue* in saying that the deduction of campaign expenses by a candidate is against public policy. However, *McGlue* fails to support the Tax Court. Since the expenditure in *McGlue* was against public policy, deduction of it was held to be. In *McDonald* the expenditure was not against public policy. Obviously, there is no public policy against a candidate spending a reasonable sum to approach the electorate. Therefore the deduction of the expense cannot be. The subsequent opinions rendered in the *McDonald* case by the court of appeals and the Supreme Court, although affirming the Tax Court, were not based on the public policy argument. See *McDonald v. Commissioner,* 139 F.2d 400 (3d Cir. 1943), aff'd, 323 U.S. 57 (1944).

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15 Expenses paid or incurred in seeking employment or in placing oneself in a position to begin rendering personal services for compensation are not
incumbents; and (3) the legislative history of section 7701(a) (26), declaring public office holding to be a trade or business within the meaning of section 162, indicates that section 7701(a) (26) had nothing to do with campaign expenses. Maness distinguished McDonald as to qualifying fees and party assessments: in McDonald these expenses were paid directly to the political party and were not required by statute; in Maness they were required by statute to be paid to the state. Therefore they were held to be "taxes" within the general language of section 164 as it existed in the applicable tax year. The "taxes" theory is, however, of minor importance; an amendment to section 164 has eliminated the possible use of this distinction for tax years beginning after 1963.

The Davenport case indicates that McDonald is controlling authority only on identical facts. Finding factual differences, deduction of the qualifying fee and the party assessment was allowed as a business expense under section 162 and as an expense incurred for the production of income under section 212. There was no justifiable indication that had the factual differences been present in McDonald the deductions would have been allowed in that case. In allowing deductible. See William S. Scull II, 33 P-H Tax Ct. Mem. 1483 (1964); Abraham Teitelbaum, 33 P-H Tax Ct. Mem. 932 (1964); Edward R. Godfrey, 32 P-H Tax Ct. Mem. 1 (1963), aff'd, 335 F.2d 82 (6th Cir. 1964). See generally Treas. Reg. § 1.212-1(f) (1957); 4 MERTENS, op. cit. supra note 1, § 25.08.

18 323 U.S. at 63.
19 Id. at 62 n.3, citing 1 Hearings on H.R. 7835 Before the Senate Committee on Finance, 73d Cong., 2d Sess. 29 (1934).
20 See note 6 supra. The Internal Revenue Service has taken irresolute views on whether mandatory campaign expenses are taxes. Rev. Rul. 57-345, 1957-2 CUM. BULL. 132, said that the New Mexico primary filing fee required of candidates for political office by N.M. STAT. ANN. ch. 3, art. 11, § 17 (1953) and to be paid to the state was deductible as a tax. The ruling was extended in Nichols v. United States, 63-2 U.S. Tax Cas. ¶ 9823 (N.D. Ga. 1963). In this case the primary filing fee was held to be a tax even though participation in the primary was not required by statute and the filing fee was paid to the political party. Rev. Rul. 60-366, 1960-2 CUM. BULL. 63, revoked Rev. Rul. 57-345 and held the North Carolina primary filing fee, required of candidates for political office by N.C. GEN. STAT. § 163-120 (1964) nondeductible. The Maness case refused to follow Rev. Rul. 60-366.

Revenue Act of 1964, § 207(a), 78 Stat. 40, limited the deduction of taxes to: state, local, and foreign real property taxes; state and local personal property taxes; state, local, and foreign income taxes; state and local general sales taxes; and state and local gasoline taxes. Other taxes may be deducted under §§ 162 and 212.

In Davenport the expenses were required by statute, TEX. STAT. ANN. arts. 13.07a, 13.08 (Supp. 1964); in McDonald they were required only by
the business expense deduction, the court rejected the view stated by Mr. Justice Frankfurter in *McDonald* that a valid distinction exists between expenses incurred in being a public official and in running for public office. Adopted were the arguments made by the taxpayer in *McDonald* that the distinction would create an unreal separation as though each type of expenditure had no relation to the other, and that the taxpayer could not have continued in office without incurring the election expenses. Emphasis was placed on the re-election aspect. By seeking re-election the taxpayer attempted merely to continue his existing business.

The court responded to the discrimination argument relied upon in *McDonald* for disallowance of the business expense deduction under section 162, by holding that both the taxpayer seeking re-election and his opponent seeking a new position could deduct these campaign expenses as being incurred for the production of income under section 212. The applicability of section 212 to campaign expenses involves a statutory construction problem: to what extent must courts be guided by legislative history in interpreting seemingly clear words of a statute?

the political party. This distinction does not justify refusal to follow *McDonald* because the expenses need only be ordinary and necessary in order to be deductible under §§ 162 or 212. Neither case denied that the expenses were ordinary and necessary. The mandatory nature of the *Davenport* expenses is relevant to whether the expenses were taxes deductible under § 164. But the *Davenport* decision is not based on § 164. In fact, authority is cited that the expenses were not taxes. Furthermore, the court pointed out that, unlike *McDonald*, the taxpayer in *Davenport* was entitled to a refund of any part of his assessment not expended by the party to finance the primary. This fact detracts from, rather than adds to, the view that the expenses are taxes. Another distinction referred to by the court is that in *Davenport*, the assessment would be used locally, whereas in *McDonald* it would be used statewide.


2 Expenses of continuing or expanding an existing business are deductible. *York* v. Commissioner, 261 F.2d 421 (4th Cir. 1958); *Cornelius Vanderbilt, Jr.*, 26 P-H Tax Ct. Mem. 916 (1957).

22 The "plain meaning rule" of statutory interpretation is that a court may not look to the legislative history of an unambiguous statute in order to give it a different meaning. See *Packard Motor Car Co.* v. NLRB, 330 U.S. 485 (1947); *Caminetti* v. United States, 242 U.S. 470 (1917). See criticism of this rule in 2 *SUTHERLAND, STATUTORY CONSTRUCTION* § 4502 (3d ed. 1943). This rule would support the view that § 212 allows the deduction of campaign expenses. The *McDonald* case took the opposite approach, that the literal words of a statute may be read and relied upon only when the legislative history is unclear. This approach to statutory interpretation has found recent approval in Dean Rostow's statement that "statutes, cases and words have no meaning apart from their contexts. None at all. As words, from the point of view of verbal analysis, linguistic
Uncertainty in the scope of the business expense deduction led to the enactment of section 212. The 1921 position of the Bureau of Internal Revenue was that campaign expenses of a candidate were personal, therefore not deductible. Yet the Bureau also declared that the business expense deduction included "all the ordinary and necessary expenses paid or incurred in the production of taxable income." Higgins v. Commissioner rejected that view and disallowed deduction for investment management expenses. Subsequent to Higgins the Treasury Department recommended an amendment to restore the deduction of expenses paid or incurred in the production of income. The recommendation was enacted; it now appears as section 212. Regulations appearing shortly after the enactment show clearly that the Treasury in proposing and promoting the amendment did not intend to abandon its earlier declared position that campaign expenses are not deductible. But the intent of Congress in enacting section 212 is unclear.

In McDonald the Court was equally divided on whether the section was broad enough to apply to campaign expenses. Mr. Justice Frankfurter believed that it was not:

In short, the act of 1942 [now section 212] in no wise affected the disallowance of campaign expenses as consistently reflected by legislative history, court decision, Treasury practice and Treasury regulations. . . . Every relevant item of evidence bearing upon the history of this amendment precludes the inference that the Treasury without intent and the Congress without appreciation opened wide the door for the allowance of campaign expenditures as deductible expenses.

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analysis, or a fortiori, from the point of view of their use in law, they are meaningless." Panel Discussion, "The Computer in Law, Yes or No?" in M.U.L.L., Sept. 1964, p. 104.


312 U.S. 212 (1941).

1 Hearings on Revenue Revision Before the House Committee on Ways and Means, 77th Cong., 2d Sess. 88 (1942); Hearings Before the Senate Committee on Finance on the Revenue Act of 1942, 77th Cong., 2d Sess. 50 (1942).

See note 1 supra.

Justices Stone, Roberts and Jackson concurred in the opinion of Mr. Justice Frankfurter that § 212 was merely designed to reverse the result in Higgins, therefore was inapplicable to the facts in McDonald. Mr. Justice Rutledge concurred in result only. Justices Reed, Douglas and Murphy joined in the dissent of Mr. Justice Black to the effect that the language of § 212 was sufficiently broad to allow the deduction of campaign expenses.

323 U.S. at 62-63.
It is noteworthy that Justice Frankfurter did not have express support for his broad generalization in the committee reports on section 212.\(^{31}\)

Inferences to be drawn from the committee reports support the view that section 212 should be broadly applied\(^{32}\) as suggested by the dissent of Mr. Justice Black in *McDonald* and by the *Maness* and *Davenport* cases. This view is supported by arguments that (1) the literal language of section 212 is broad enough to allow such a deduction;\(^{33}\) (2) advertising expenses of private businesses are deductible;\(^{34}\) and that (3) it is, unlike the narrow view, consistent with the basic policy of income tax law to tax net, not gross, income.\(^{35}\)

The *Maness* and *Davenport* cases do not stand alone in abandoning the earlier restrictive interpretation of the scope of section 212 as seen in *McDonald*.\(^{36}\) There is a growing feeling that an express

\(^{31}\) Justice Frankfurter said that his view was supported by the committee statement that § 212 is subject to all the limitations that apply to § 162, except the trade or business requirement. However, the committee statement means only that the expenses must be ordinary and necessary, paid or incurred in the taxable year and that they must be expenses rather than capital items. None of these factors were at issue in *McDonald*.

\(^{32}\) The committee reports listed the expenses excluded from deduction under § 212 as those which are expended "primarily as a sport, hobby, or recreation." H.R. Rep. No. 2333, 77th Cong., 2d Sess. 75 (1942); S. Rep. No. 1631, 77th Cong., 2d Sess. 88 (1942). Are campaign expenses for political office analogous?

\(^{33}\) This argument is the basis for the *Davenport* decision. See also *McDonald* v. Commissioner, 323 U.S. 57, 67 (1944) (Black, J., dissenting). For the text of § 212 see note 10 supra.

\(^{34}\) The deductibility of advertising expenses is subject to only two limitations. They must be primarily to stimulate current business; otherwise they must be capitalized and spread over the life of the asset. They must be ordinary and necessary. See Poletti v. Commissioner, 330 F.2d 818 (8th Cir. 1964); George K. Herman Chevrolet, Inc., 39 T.C. 846 (1963). The *Maness* decision refers to the fact that monies spent in seeking proxies in an "election" for control of a corporation are deductible. Compare *Herman*, supra at 873, with *Graham* v. Commissioner, 36 T.C. 456 (1961). The *Surasky* case broadens the scope of § 212 by relaxing the degree of proximate relationship an expense must have to the production of income in order to be deductible under § 212. See *Surasky* v. United States, supra at 194-95.

\(^{35}\) "Taxation on net, not on gross, income has always been the broad basic policy of our income tax laws....Congress in its Revenue Act of 1942 [adding section 212]....indicated in a most forthright manner its allegiance to the net income tax policy." *McDonald* v. Commissioner, 323 U.S. 57, 66-67 (1944) (Black, J., dissenting).

\(^{36}\) The Internal Revenue Code of 1954 broadened the allowable deductions under § 212 to include expenses paid or incurred in connection with the determination, collection or refund of any tax. *Int. Rev. Code* of 1954, § 212(3).
NOTES AND COMMENTS

statutory allowance of a deduction by a candidate for reasonable
campaign expenditures as expenses incurred for the production of
income should be permitted. However, two decades have passed
since McDonald; apparently the courts are themselves ready to take
action.

Brown Hill Boswell

Torts—Damages—Aggravation of Pre-existing Injuries

On February 11, 1963, while the plaintiff in Lockwood v. McCaskill was waiting for a traffic light to change, his automobile was struck in the rear by defendant’s truck. He was unconscious momentarily and later suffered headaches accompanied by pain in his neck, back, hips and left leg. Because of this pain he was unable to return to the operation of his service station until May 1. During his absence an employee wrecked a customer’s car, forcing plaintiff to pay damages in the amount of 1,200 dollars. Plaintiff, “basically . . . an insecure person . . . a perfectionist . . . a worrisome individual,” brooded about his financial difficulties in meeting payrolls and other expenses. He had difficulty sleeping because of this worry, pain, and headaches. On the morning of May 20, more than three months after the accident, he suffered an attack of amnesia and was hospitalized until June 15, 1963. During his stay he suffered periods of confusion and depression.

At the trial plaintiff’s psychiatrist testified to the effect that “the accident and resulting physical injuries would not have caused amnesia in a person with ordinary susceptibility to worry and insecure feelings, but that plaintiff is more than ordinarily prone to suffer from these mental conditions . . .” It was further stated that the attack of amnesia was induced by a deep sense of insecurity, that . . . the injuries he suffered in the accident and the financial burdens and losses caused by his physical incapacity to work and

1 262 N.C. 663, 138 S.E.2d 541 (1964).
2 Id. at 666, 138 S.E.2d at 543.
3 Id. at 670, 138 S.E.2d at 546.