Taxation -- Deduction of Meals as a Business Travel Expense

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time will be subject to the decedent's debts to the extent of his proportionate share. Determining the total amount subject to the claims of creditors would not be difficult if the depositors made no withdrawals prior to death. But if withdrawals were made, the character of the remaining funds would have to be determined. Such funds may be exempt, partially subject or fully subject to the claims of creditors.35

In conclusion, the 1963 amended version of the statute is basically a comprehensive codification of the common law of joint bank accounts with the right of survivorship in North Carolina. Subjecting accounts to the claims of creditors to the extent of the decedent's proportionate share is the only provision affecting the rights of the parties which is inconsistent with the case law. To assist in the administration of this fund and to protect the creditor's rights upon the death of one of the parties, the statute includes a method of disbursement. Although generally explicit in its terms, the statute should be clarified as to whether it is to be applicable retroactively or prospectively, and also as to whether the contract date of the account or the deposit date of the particular funds determines the rights of creditors upon the death of one of the parties.

WILLIAM H. LEWIS, JR.

**Taxation—Deduction of Meals as a Business Travel Expense**

The United States Supreme Court recently held in *United States v. Correll*1 that a wholesale grocery salesman could not deduct the costs of breakfasts and lunches he ate while traveling in his territory because he was not required to stop for sleep or rest. Mr. Correll lived outside his territory but was required by his employer to be in the district at the start of the working day and to eat breakfast and lunch at the restaurants of his customers.2 The Corrells filed a joint income tax return3 and claimed the expense of these meals as a business deduction under section 162(a)(2) of the Internal

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35 The court would have to adopt a formula to determine this: e.g., the first funds in were the first funds out or the last funds in were the first funds out.

1 *36 U.S.L.W. 4055 (U.S. Dec. 11, 1967).*
2 *Correll v. United States, 369 F.2d 87 (6th Cir. 1966).*
Revenue Code. They paid the deficiency asserted by the Commissioner of Internal Revenue and sued in the district court for a refund. The jury returned a verdict for the taxpayer and the Sixth Circuit affirmed.

The Commissioner contended that the cost of such meals was a personal living expense and not deductible. He took the position that for a business trip to be “away from home” so as to qualify for a deduction for the cost of meals, the trip must be of such a duration as to require “sleep or rest” before returning home. The Supreme Court accepted his interpretation.

The Commissioner at one time insisted that the cost of transportation on business trips was not deductible unless the trip was overnight, but he found little support in the courts for this position. In the 1954 Code Congress specifically rejected this idea and made these expenses deductible though the trip was not overnight.

It appears that the instant case arose under § 162(a)(2) of the 1954 Code before it was amended in 1962. At that time the statute read as follows:

(a) In general—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business, including—

(2) traveling expenses (including the entire amount expended for meals and lodging) while away from home in pursuit of a trade or business.


Correll v. United States, 369 F.2d 87 (6th Cir. 1966).

“[N]o deduction shall be allowed for personal, living, or family expenses.” INT. REV. CODE OF 1954, § 262.

This has often been referred to as the “overnight” rule, but it is more accurately called the “substantial sleep or rest” rule. William A. Bagley, 46 T.C. 176, 182 (1966). While Rev. Rul. 63-239, 1963-2 CUM. BULL. 87 supposedly disallows any deduction unless the taxpayer is “away from home overnight” it does not claim to supersede Rev. Rul. 54-497, 1954-2 CUM. BULL. 75, which defines overnight as “a trip on which the taxpayer’s duties require him to obtain necessary sleep away from his home. . . . [T]he employee need not be away from his home terminal for entire 24 hour day or throughout the hours from dusk until dawn.” Despite the existence of this ruling the Commissioner in Williams v. Patterson, 286 F.2d 333 (5th Cir. 1961), contended that a taxpayer who was away for 16-18 hours each trip and rented a room for rest during his layover could not deduct the costs of meals and lodging. See also Rev. Rul. 61-221, 1961-2 CUM. BULL. 34; I.T. 3395, 1940-2 CUM. BULL. 64.


E.g., Chandler v. Commissioner, 226 F.2d 467 (1st Cir. 1955); Joseph M. Winn, 32 T.C. 220 (1959); Kenneth Waters, 12 T.C. 414 (1949).


At present, business transportation expenses can be deducted by an
DEDUCTION OF MEALS

1960 the Treasury declared it would not litigate any pending disputes of this nature under the 1939 Code. The "overnight" rule found more support from the judiciary when it was applied to the deductibility of meals. The acceptance of the rule in the courts of appeal was limited, but the Tax Court followed it until 1966 when it abandoned the rule. On appeal, however, the First Circuit reversed and remanded the case. This decision created a conflict between the circuits and the Supreme Court granted certiorari in order to resolve the conflict.

It appears that the primary reason the Supreme Court accepted the "substantial sleep or rest" rule was to avoid the costly and indefinite case-by-case determination of what business travel is sufficient to be classified as "away from home" and therefore deductible. The simplicity and certainty of this approach is its most appealing aspect. Those courts which have rejected the rule have not been able to offer any substitute which has this quality of clarity; what

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employee in arriving at adjusted gross income only if they are reimbursed by the employer or if they are incurred while he was away from home overnight.

For this reason ... [the] bill permit[s] employees to deduct business transportation expenses in arriving at adjusted gross income. The business transportation expenses which are deductible ... include only expenses for actual travel.


Rev. Rul. 60-147, 1960-1 CUM. BULL. 682 (it was specified that the acceptance of the Winn decision, note 9 supra, did not affect the position of the Commissioner that meals and lodging were not deductible unless the trip was overnight).

United States v. Morelan, 356 F.2d 199 (8th Cir. 1966); Hanson v. Commissioner, 298 F.2d 391 (8th Cir. 1962); Williams v. Patterson, 286 F.2d 333 (5th Cir. 1961); Ahrens v. United States, 264 F. Supp. 518 (S.D. Ill. 1967). In Rev. Rul. 61-221, 1961-2 CUM. BULL., 34, the Internal Revenue Service stated it would follow the decision in the Williams case, supra, and modified the "overnight" rule to the "substantial sleep or rest" rule.

See, e.g., Jerome Mortrud, 44 T.C. 208 (1965); Al J. Smith, 33 T.C. 861 (1960); Sam J. Herrin, 28 T.C. 1303 (1957).


Commissioner v. Bagley, 374 F.2d 204 (1st Cir. 1967).


Id. at 4056.

In William A. Bagley, 46 T.C. 176, 182 (1966) the court said that the rule provided simplicity and certainty but added that "administrative workability [must] yield to logic, reason and justice." However, the First circuit reversed the Tax Court stating that "fairness and administrative certainty are more important than logic." Commissioner v. Bagley, 374 F.2d 204, 207 (1st Cir. 1967).
they have presented is, in reality, the case-by-case approach. Even with such a definite rule there is a possibility of future litigation over whether the "sleep or rest" on which the deduction must now depend is reasonably necessary.

The basic fairness of the rule was also noted by the Supreme Court. The inequality of a rule that would grant a deduction for the cost of meals to a man who begins and ends his work day at home, like any office worker or laborer, merely because he traveled in his occupation troubled the Court. The cost of the noon meal, for a worker not on travel status, is a personal living expense and not deductible. The Court reasoned that the distance traveled should have no relation to the deductibility of the meal. However, the same logic holds true when applied to the rule adopted by the court. Does the addition of the time element make the meal any more deductible? Why should it matter for tax purposes whether the taxpayer eats the evening meal, rents a room and leaves for home early the next morning, or eats the evening meal and, instead of renting a room for the night, begins his trip home at a late hour? In most of the litigation in this area the taxpayers have either worked long hours or arrived home late at night. Strict adherence by the Treasury to the "sleep or rest" rule may occasionally influence a taxpayer in such a case to stay overnight so that he may deduct the cost of three meals (lunch, dinner, and breakfast) as well as his lodging.

The Court was also apparently impressed by the Commissioner's

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21 See cases cited notes 13, 15 supra.
22 Rev. Rul. 61-221, 1961-2 Cum. Bull. 34; the Treasury quotes from the Fifth Circuit's decision in Williams v. Patterson, 286 F.2d 333 (5th Cir. 1961) that the correct rule is: "If the nature of the taxpayer's employment is such that when away from home, during released time, it is reasonable for him to need and to obtain sleep or rest . . . his expenditures . . . for the purpose of obtaining sleep or rest are deductible traveling expenses under section 162(a)(2) of the 1954 Code."
25 United States v. Correll, 36 U.S.L.W. 4055, 4056. However, the dissent points out that the deduction, according to the statute, depends only on geography and makes no reference to any time element. Id. at 4057.
26 In the instant case the taxpayer was on the road 13 hours, from 4:30 a.m. until 5:30 p.m. In Commissioner v. Bagley, 374 F.2d 204 (1st Cir. 1967), the taxpayer would usually arrive home around 10:00 p.m. In Williams v. Patterson, 286 F.2d 333 (5th Cir. 1961) the taxpayer averaged 16-18 hours for each trip.
claim of Congressional approval of his interpretation of what is meant by "away from home." The Commissioner has contended that Congress endorsed his regulations in 1954 when it enacted section 162(a)(2) substantially unchanged from the 1939 Code. This is based on the fact that the Committee Reports made reference to the "overnight" rule in recommending the amendment of what is now section 62(2)(C) of the 1954 Code. In William A. Bagley the Tax Court rejected this argument. The fact that Congress dropped the "overnight" rule as a requisite to the deduction of transportation expenses, without any evidence that it knew of the application of the rule to the deductibility of meals, could be interpreted as evidence of Congressional disfavor of the "overnight" rule. The Court pays lip service at least to the suggestion that the words "meals and lodging" were intended to be a unit because they appear in the statute without being separated by a comma and therefore meals, to be deductible, must be accompanied by lodging. This argument was rejected by the Eighth Circuit in Hanson where the court pointed out that section 62(2)(B), which makes specific reference to section 162, reads "travel, meals, and lodging," the comma being intended to denote separability of the expenses.

The final reason given by the Court is the delegation by Congress to the Commissioner of the power to make necessary rules and regulations. It is the duty of the judiciary to insure that he does not exceed this authority. The majority of the Court is of the opinion that the regulation has not been shown to have exceeded this

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29 See note 11 supra.
30 For purposes of this subtitle, the term 'adjusted gross income' means, in the case of an individual, gross income minus the following deductions:

(2) TRADE AND BUSINESS DEDUCTIONS OF EMPLOYEES—

(C) TRANSPORTATION EXPENSES—The deductions allowed by part VI (sec. 161 and following) which consist of expenses of transportation paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

32 See note 4 supra.
33 298 F.2d 391 (8th Cir. 1962).
34 Id. at 397.
35 INT. REV. CODE OF 1954, § 7805(a).
authority and usurped the legislative function of the Congress. The three dissenting justices are of the opinion that the regulation has been shown to be an invalid interpretation of the statutory language.

STEPHEN E. CULBRETH

Torts—Medical Malpractice—Rejection of “Locality” Rule

In Pederson v. Dumouchel, plaintiff brought a malpractice action against a physician, dentist, and hospital to recover for brain damage allegedly sustained as a result of an operation. He had suffered a broken jaw and was placed under the care of Dr. Dumouchel, who associated a dentist to reduce the fracture. The operation was performed between 10:20 a.m. and noon the following day. The dentist had no working knowledge of the use of a general anesthetic, which was administered by a hospital nurse. No medical doctor was present during the operation; it was Dr. Dumouchel's afternoon off and he had left the hospital before the operation commenced. Plaintiff suffered convulsive seizures in the recovery room. About 1:30 p.m. another doctor was located who suspected brain damage, consulted a neurosurgeon in Seattle, 110 miles away, and arranged to have plaintiff taken there. He remained unconscious for a month. Expert testimony supported the finding that plaintiff suffered severe brain damage caused by the administration of the anesthetic. Dr. Dumouchel was charged with negligently failing to assume the responsibility for the patient's medical care while in surgery. The trial judge instructed the jury that the standard of care to be applied was "the learning, skill, care, and diligence ordi-


Id.

1 Wash. 2d ——, 431 P.2d 973 (1967).

2 The scope of this note is limited to a discussion of the standard of care applied to physicians and surgeons. Generally, the standard for dentists is the same as that applied to doctors.

Much that is said herein about the locality rule is applicable to hospitals as well as physicians. However, hospital liability for negligence necessarily involves additional factors such as administrative supervision, Annot., 14 A.L.R. 3d 873 (1967), agency principles when plaintiff seeks to establish hospital liability for the negligence of a physician, Annot., 69 A.L.R.2d 305 (1960) and the physical facilities of the hospital. See 43 N.C.L. Rev. 469 (1965). The Pederson court held that plaintiff's case against the hospital was sufficient to go to the jury on the doctrine of res ipsa loquitur. See Annot., 173 A.L.R. 535 (1948); Annot., 9 A.L.R.3d 1315 (1966).