DEDUCTIBILITY OF THE WIFE'S TRAVEL AS A BUSINESS EXPENSE

INTRODUCTION

In a recent News Release the Internal Revenue Service instructed its agents to scrutinize deductions for business trips that appear to be vacations in disguise. It can be expected that the auditor's roving eye will again focus upon the deduction of travel expenses attributed to the wife who accompanies her husband on a business trip.

The deductibility of the wife's travel expenses has been the subject of several periodical articles, three revenue rulings, and an abundance of case law. As generally stated, the wife's travel expenses may be deducted as the ordinary and necessary business expenses of her husband where her presence on the trip has a bona fide business purpose, and the services performed by her are not merely incidental.

The above test is easily stated, but is difficult to apply to specific facts. It is the purpose of this article to clarify the phrase "bona fide business purpose" and to provide some concrete ideas as to the cir-

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4. The first obstacles to the deductibility of a wife's travel expenses are statutory:
   SEC. 262. PERSONAL, LIVING, AND FAMILY EXPENSES.
   Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses. Int. Rev. Code of 1954, § 262.
Such exceptions are expressly provided for:
   SEC. 162. TRADE OR BUSINESS EXPENSES.
   (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 any trade or business, including—
   (2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; . . . Int. Rev. Code of 1954, § 162, as amended, P.L. 87-834 § 4 (1962).
   Treasury regulations, in pertinent part, provide:
   § 1.162-2 Traveling expenses
   (c) Where a taxpayer's wife accompanies him on a business trip, expenses attributable to her travel are not deductible unless it can be adequately shown that the wife's presence on the trip has a bona fide business purpose. The wife's performance of some incidental service does not cause her expenses to qualify as deductible business expenses. The same rules apply to any other members of the taxpayer's family who accompany him on such a trip. Treas. Reg. § 1.162-2 (1954).
cumstances under which a taxpayer may deduct the travel expenses of his spouse as ordinary and necessary business expenses. To be distinguished, and not considered here, is the related situation where a corporate taxpayer seeks to deduct the travel expenses attributed to the wife of a corporate employee.  

By considering the case law as it divides into categories of common denominator it is possible to arrive at some rather specific guidelines to this deduction. This article will first consider those cases which have disallowed and subsequently those which have allowed the deduction.

DEDUCTION DISALLOWED

There are numerous situations in which the deduction is clearly denied for the reason that the taxpayer fails to establish any connection between his business and the presence of his wife.

When the services performed by the traveling wife are only medically related to the husband's ability to work; the majority of cases deny the deduction. For example, in the case of Preston R. Rieley the court denied the deduction of the travel expenses attributed to the wife of a partially paralyzed stroke victim, reasoning that the presence of the wife was unrelated to the husband's official duties and therefore non-deductible as a personal living expense. The medical cases clearly demonstrate the necessity of selecting properly the basis of deductibility, for notwithstanding the uniform rule that such costs are not deductible as business expenses they may well be deductible as medical expenses.  

5. Since it is the corporation which seeks the business deduction, the presence of the wife must be an ordinary and necessary expense of the corporation; her presence must therefore serve the bona fide business purpose of the corporation, and not necessarily those of the husband.


The corporate framework is suited to the argument that the reimbursed travel expenses paid to the corporate employee's wife are a gift. However, as in other donative transactions, a rather strict burden of proof is placed on the taxpayer. See Silverman v. Comm'r, 253 F.2d 849 (8th Cir. 1958).


A second area in which the deduction is clearly denied is found in those situations characterized by the phrase "vacations in disguise." In these cases the taxpayer generally admits that the trip was of mixed business-pleasure purposes and asserts without sufficient proof that his wife served some business purpose. For example, John Guglielmetti operated a car-washing business in California. His wife spent some time in the business, mainly as cashier, and the two older girls put in nominal amounts of time as cashiers. Guglielmetti took his wife and three daughters to various car-washing plants in the eastern United States and Canada. "The family went to some of these plants with petitioner but they all did considerable sight-seeing," and the deduction for their travel expenses was denied.

The same elements appear controlling in Elmer K. Zitzewitz. The taxpayer was disallowed the deduction of the travel expenses of his bride of four days on a trip that, by his admission, was devoted partly to vacation. Again there was a failure of proof under circumstances well suited to vacation purposes. These and other cases have established that the courts are not receptive to allegations of bona fide business purpose, particularly where the expenses deducted are attributed to a family member in connection with travel characterized by mixed business-pleasure motives. In such cases the taxpayer must surmount a heavy burden of proof in order to establish that his expenses do not fall within Int. Rev. Code of 1954, §262, with its denial of deductions for personal and family expenses.

A third group of cases emphasizes that the wife's performance of business-related services must be necessary. For example, in Cornelius Vanderbilt, Jr., the taxpayer was denied the deduction of his wife's travel expenses when she accompanied him on a European trip. Vanderbilt's business entailed a great deal of photog-

11. Id. at 669.
12. Id.
13. Id. at 671.
15. Weatherford v. United States, 418 F.2d 895 (9th Cir. 1969) (deduction denied where socially gracious wife accompanied wheat-farmer husband on a business-pleasure trip to Orient); United States v. Gotcher, 401 F.2d 118 (5th Cir. 1968), rev'd 259 F. Supp. 340 (E.D. Texas 1966) (taxpayer, a Volkswagen dealer denied deduction for travel expenses of his wife who accompanied him on trip to Germany, primarily a vacation for wife); Patterson v. Thomas, 289 F.2d 108 (5th Cir. 1961), cert. denied, 368 U.S. 837 (1961) (deduction denied for travel of wife to convention where employer regarded trip and convention as primarily devoted to pleasure); Donald W. Scarborough, P-H TAX CT. MEM. ¶71,142 (1971) (taxpayer denied deduction for what the court referred to as "family excursions to a country home").
raphy and it was not disputed that his travel expenses were deductible. It was conceded that his wife performed at least 30% of the film shooting; however, the court emphasized that it did not appear that she went to Europe for that purpose or that her performance of those activities was necessary. The court found that her presence was primarily for vacation purposes and that she did no more than might be expected from an interested wife. In another case, Robert H. Cowing, M.D., a physician who was also a pilot provided his own transportation by air on both business and pleasure trips. His wife accompanied him on several of these and shared pilot duties. After noting that there was no requirement for two pilots, the court reasoned that her assistance in flying did not serve any purpose that would make her travel ordinary and necessary to the business. Cowing's case was further weakened by a finding that some of the trips were solely for pleasure, and that his wife tended to accompany him particularly to resort areas.

Cases like Vanderbilt and Cowing draw attention to the requirement that business expenses be necessary. In this context the services must be such that someone other than the taxpayer is required to perform them. In both Cowing and Vanderbilt the taxpayer unnecessarily delegated tasks to his wife that he could well have performed himself.

A fourth group of cases stands in support of the proposition that the wife's performance of social functions, as hostess, representative, and companion, even when combined with the performance of incidental administrative or secretarial duties, is generally not a sufficient basis for allowing the deduction. The taxpayer is ordinarily unable to establish a reasonable connection between the social functions performed by his wife and his business purposes. In the case of Sheldon v. Commissioner, an insurance executive was denied the deduction of travel expenses of his wife to a convention. She was his partner at receptions and acted as a hostess for other wives. The court found that the taxpayer failed to establish a direct connection between the expenses incurred for his wife and his business. A closer case is that of William Johnson, which also concerned a wife's accompaniment of her husband to conventions. It was established that the wife performed some secretarial work, visited the company booth, and worked with other ladies in the company hospitality suite. However, the taxpayer testified that he took his wife mainly for social purposes and it was found that she pursued activities far removed from any imagined business purpose. Simi-

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18. 299 F.2d 48 (7th Cir. 1962).
larly, in Theodore R. Price\(^{20}\) the deduction was denied for a wife's travel expense to a convention where the only evidence of bona fide business purpose was that she attended some activities planned for wives and that she generally assisted her husband in meeting business acquaintances.

In summary, the cases disallowing the deduction of the wife's travel expenses draw attention to several important considerations. First, in light of the prohibition of the deduction of personal and family expenses, the taxpayer must meet a heavy burden of proof to establish that his wife's presence served his bona fide business purposes. Second, it is not sufficient to merely establish that the tasks performed by the wife are referable to the business purposes of the husband, for it must be established that her performance of those tasks was necessary. Third, the wife's performance of "social functions" is generally an insufficient basis for the deduction.

**DEDUCTION ALLOWED**

**WHERE THE WIFE IS AN EMPLOYEE OR QUASI-EMPLOYEE**

Where the wife is engaged in the business of her husband and performs substantial tasks that are directly connected with his business, the deduction is allowed. In *Poletti v. Commissioner\(^{21}\)* a deduction was permitted for the travel expenses of taxpayer's wife who accompanied him to California, assisted in opening an employment agency, and worked full time in the agency office while in California.

It is not necessary that a formal employment exist. An example of an employment relationship between husband and wife is found in the case of *John Charles Thomas\(^{22}\)* in which a professional singer was allowed to deduct his wife's travel expenses. The court found that the wife was also a trained singer who coached her husband, made travel arrangements, and acted as his secretary. Her presence was found to be necessary. In a similar case,\(^{23}\) another professional vocalist was allowed to deduct the travel expenses of her non-salaried husband who acted as her full-time manager. His duties included: securing work for his wife; negotiating contracts; making travel and lodging arrangements; arranging the bandstand, lighting and amplification at her appearances; rehearsing the orchestra; hiring extra musicians when necessary; and paying all the bills.\(^{24}\)


\(^{21}\) 330 F.2d 818 (8th Cir. 1964).

\(^{22}\) 39 B.T.A. 1241 (1939).


\(^{24}\) Id. at 548-71.
In the case of Duncan v. Bookwalter, a physician and wife, who as partners operated a clinic for alcoholics, were allowed to deduct the travel expenses of a world trip as the ordinary and necessary expenses of operating the clinic. The husband was a medical doctor who specialized in treating alcoholics and the trip was undertaken to study alcoholism throughout the world. The court found that:

Mrs. Duncan's presence and collaboration on this field study was helpful to Mrs. Duncan as a partner in the operation of Ralph Clinic, as well as being necessary to accomplish the primary purpose for which Dr. Duncan expended the considerable sums totalling $9,667.67 on this trip.27

Common to the above cases is the performance by the wife of quantitatively substantial services necessary to the business of her husband which could not have been performed by the husband himself.

**Where the Wife's Performance of Socially Related Services is Held to Serve the Bona Fide Business Purposes of Her Husband**

There appear to be only four cases on point here; considered together they express a well qualified exception to the general rule that the wife's performance of socially related services will not provide a basis for the deduction.26

Chronologically, the first case is Warwick v. United States. Warwick, as an officer and sales representative of a company, made a business trip to Europe on which he was accompanied by his wife. In allowing the deduction the court placed great emphasis upon the unusual nature of the husband's business which required that he have a "very close friendly relationship with the European customers."29 The court also emphasized that the wife had accompanied

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26. The fact that the wife is an owner of her husband's business does not seem of great significance in determining whether her travel expenses are deductible as a business expense of her husband. However, such ownership may prove to be an independent basis of deduction either as the ordinary and necessary business expenses of the wife, or under provision for the management and conservation of the wife's income. See Clement v. United States, 331 F. Supp. 877 (E.D.N.C. 1971) (taxpayer and wife owned tracts of orange groves in Florida; wife's accompaniment on trip to Florida was not necessary); John O. Lockwood, P-H Tax Cr. Mem. ¶70.141 (1970) (wife, a shareholder in her husband's corporate employer, failed to prove that her investment warranted trip); Fred Dennett, 7 B.T.A. 1173 (1927) (wife's expenses on trip to care for jointly-owned real estate held deductible).
27. 216 F. Supp. at 305.
28. See text at notes 18 to 20 supra.
30. Id. at 764. The company was a large tobacco-buying concern, which sold to a few large cigarette manufacturers. The manufacturers' orders were relatively infrequent, but extremely large. The company required that its salesmen establish very close relationships with the manufacturers, and sales often took a great deal of time to consummate.
her husband on such trips for several years, and that all of her time was devoted to the assistance of her husband to the exclusion of vacation or touring on her own behalf.\textsuperscript{21}

In the second case, \textit{Allen J. McDonell},\textsuperscript{22} the taxpayer, a Wisconsin home office employee, was temporarily assigned duties in Hawaii. He was expected to be accompanied by his wife, and his duties were to insure that certain contest winners and their wives enjoyed themselves. Both the taxpayer and his wife were expected to remain constantly with the contest winners. The corporate employer paid the cost of the wife's travel expenses. In holding that such payments were not to be imputed to Mr. McDonell as income, the court emphasized the finding that the wife's duties consumed substantially all of the trip time.\textsuperscript{23} This case provides a clear example of the situation in which the performance of socially related functions by the wife serves the bona fide business purpose of the husband. Where the wife's presence serves that purpose and she performs quantitatively more than incidental services, her travel expenses are properly deductible.

In the third case, \textit{United States v. Disney},\textsuperscript{24} the plaintiff as chief executive officer of Walt Disney Productions Company was reimbursed for the expenses of his wife who accompanied him on an around-the-world trip and on two trips to Europe. The deduction was allowed upon findings that:

Mr. Disney was also expected to promote the public image of the company as one engaged in family-type entertainment, to enhance the morale and enthusiasm of company representatives, and to cultivate close and cordial relationships between his company and the exhibitors and other executives with whom the company dealt throughout the world.\textsuperscript{25}

In order for Mr. Disney to fulfill these duties it was necessary for his wife to accompany him. The key elements of the case appear to be the finding that the projection of a family-type image was a bona fide business purpose of Mr. Disney, that the presence of Mrs. Disney served such purpose, and that she spent a substantial amount of her time in the performance of those services.

The case of \textit{Wilkins v. United States}\textsuperscript{26} provides the most recent example of the exception to the general rule.\textsuperscript{27} Wilkins, was the Inspec-

\begin{footnotes}
\footnote{21. There had been one incidental side trip for which a deduction was not claimed. \textit{Id.} at 765.}
\footnote{23. \textit{Id.} at 128-67.}
\footnote{24. \textit{413 F.2d 783} (9th Cir. 1969).}
\footnote{25. \textit{Id.} at 787.}
\footnote{27. The general rule is discussed in the text at footnote 16 \textit{supra}.}
\end{footnotes}
tor General of the Foreign Service of the United States. In an action for a refund of taxes he argued that the travel expenses of his wife who had accompanied him on two official inspection trips abroad were deductible as ordinary and necessary business expenses. In allowing the deduction the court found that Mrs. Wilkins had “a considerable amount of experience” in the business of her husband, that the trip by its nature was not suited to vacation purposes, and that it was at the request of the Department of State that Mrs. Wilkins accompanied her husband on the trips. As to bona fide purpose the court stated:

The Court finds that Mrs. Wilkins served a "bona fide business purpose" of her husband by substantially contributing to the accomplishment of both the information gathering mission, as well as that related to morale. By performing numerous incidental tasks, Mrs. Wilkins freed her husband to devote more of his time to substantive duties. By her contact with the families of Post personnel, Mrs. Wilkins was able to relay to her husband information about the conditions of the Post that he might not otherwise observe. In her "representational" capacity as guest and hostess, she furthered the ends of the State Department and the business of her husband. The majority of Mrs. Wilkins' time was spent in furtherance of her husband's business purposes."

In allowing the deduction where the wife performs socially related services the four decisions contain some unifying elements that may well prove to be controlling:

(1) The performance of socially related services by both spouses became the means of achieving the ultimate business objectives of the husband. In Warwick the court spoke of developing a "very close friendly relationship with European customers;" in McDonell the husband's duties were to insure that contest winners enjoyed themselves; in Disney the objectives were to create a public image of family-style entertainment, and to enhance the morale of company representatives; lastly, in Wilkins the court relied in part upon the representational, morale-serving purpose of the husband's trip.

(2) Any thought of "vacations in disguise" was completely rebutted by evidence that the trips provided little or no time for the pursuit of non-business activities.

(3) Not only was there little opportunity for personal recreational activities, but the wives spent a substantial amount of their time in the performance of business services which could not be regarded as "incidental."

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38. 348 F. Supp at 1283.
39. Id. at 1284.
40. See note 30 supra.
CONCLUSION

In conclusion, we should first recall the heavy burden of proof that must be surmounted in establishing the deductibility of the travel expenses attributed to a wife as family member who accompanies the taxpayer on a business trip. That burden may be met by establishing that the wife was an employee or quasi-employee of the husband and that she performed substantial and necessary services that directly served the business purposes of her husband. Where the trip is one of mixed business-pleasure purposes for the husband or wife, the burden of proof may well prove insurmountable. The exception provided by those recent cases which have found bona fide business purposes in the performance of socially related services is narrow and tightly drawn; it is doubtful that it will be extended to substantially broaden the basis of this deduction.

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