T.C. Summary Opinion 1999-196

UNITED STATES TAX COURT

DAVID V. CHEN AND LIPING ZHANG CHEN, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 10927-98S. Filed October 27, 1999.

David V. Chen, pro se.

Ric D. Hulshoff, for respondent.

NAMEROFF, Special Trial Judge: This case was heard pursuant to the provisions of section 7463 of the Internal Revenue Code in effect at the time the petition was filed.[1] The decision to be entered is not reviewable by any other court, and this opinion should not be cited as authority. Respondent determined a deficiency of $2,183 in petitioners' 1995 Federal income tax and

[1] Unless otherwise indicated, all subsequent section references are to the Internal Revenue Code in effect for the year at issue.

an accuracy-related penalty under section 6662(a) in the amount of $437.

After concessions by petitioners, the issues for decision are: (1) Whether petitioners are entitled to a deduction of $10,456 for the purchase of two computers, and (2) whether petitioners are liable for the accuracy-related penalty under section 6662(a).

Some of the facts have been stipulated, and they are so found. The stipulation of facts and the attached exhibits are incorporated herein by this reference. At the time they filed their petition, petitioners resided in Rosemead, California.

During the year at issue, David V. Chen (petitioner) was employed by the Information Technology Agency (ITA) of the city of Los Angeles as a data networking engineer. Petitioner's duties consisted of implementing system designs for local area networks and wide area networks. ITA provided a computer for petitioner at his office. Petitioner earned $49,924 in wages from ITA during 1995.

Petitioner's immediate supervisor James Lee (Mr. Lee) was looking for a candidate to take a Novell computer course. After petitioner expressed interest in the course, Mr. Lee decided to send petitioner. The Novell course was held in Orange County every Saturday for 4 and a half months. ITA paid for the course, but it did not pay for books and travel expenses.

Petitioner purchased two computers in 1995 for $10,456 to set up his own network at home in order to practice what he was learning in the Novell course. ITA did not require petitioner to purchase the computers.

Petitioner already had two other personal computers at home: an Apple 2C and a 486-66. The computers purchased in 1995 were a Pentium 100 and a 486-80. The two 486's were similar, and petitioner stated that he needed both of them plus the Pentium to set up his network at home.

With the new computers, petitioner was able to access his computer at work from his home. Petitioner was able to solve certain problems from home without going into the office. ITA did not require petitioner to work from home. Petitioner also prepared presentations for different work projects on his home computers. Petitioner stated that he could do these projects at the office but "not in the time slot allotted." Before petitioner purchased the computers in 1995, he prepared these projects on the older computers.

Mr. Lee testified that he probably would not have let petitioner practice on the computers at the office. He also stated that it was to petitioner's benefit to have knowledge of the newer technology, but it was not a requirement of his employment. Both Mr. Lee in his testimony and petitioner in his brief alluded that there were computers at the training facility

in Orange County, but they did not elaborate on why petitioner did not utilize those computers.

The Novell operating system was eventually installed on the computers at ITA.

Petitioners elected to expense the cost of the computers pursuant to section 179 on their 1995 joint return. Respondent contends that the purchase of the computers was not an ordinary and necessary business expense of petitioner's employment.

Section 162(a) allows deductions for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. An "ordinary" expense is one that relates to a transaction "of common or frequent occurrence in the type of business involved", Deputy v. du Pont, 308 U.S. 488, 495 (1940), and a "necessary" expense is one that is "appropriate and helpful" for "the development of the petitioner's business", Welch v. Helvering, 290 U.S. 111, 113 (1933). A trade or business includes the trade or business of being an employee. See O'Malley v. Commissioner, 91 T.C. 352, 363-364 (1988); Primuth v. Commissioner, 54 T.C. 374, 377-378 (1970). Section 262(a) provides that no deduction shall be allowed for personal, living, or family expenses.

Section 179 provides that a taxpayer may elect to expense in the year placed in service the cost of section 179 property acquired for use in the active conduct of a trade or business.

Section 280F(d)(3)(A), however, provides that an employee may not claim a section 179 deduction for listed property unless the employee's use of the listed property is "for the convenience of the employer" and "required as a condition of employment." Listed property includes any computer or peripheral equipment. See sec. 280F(d)(4)(A)(iv).

The "convenience of the employer" and "required as a condition of employment" tests are essentially the same. See Benninghoff v. Commissioner, 71 T.C. 216, 218 (1978), affd. per curiam 614 F.2d 398 (5th Cir. 1980). In order to satisfy the "condition of employment" requirement, the use of the property must be required in order for the employee to perform the duties of his or her employment properly. See sec. 1.280F-6T(a)(2)(ii), Temporary Income Tax Regs., 49 Fed. Reg. 42713 (Oct. 24, 1984). Whether the use of the property is so required depends on all the facts and circumstances. The standard is an objective one. See Dole v. Commissioner, 43 T.C. 697, 706 (1965), affd. per curiam 351 F.2d 308 (1st Cir. 1965). The employer need not explicitly require the employee to use the property. Similarly, a mere statement by the employer that the use of the property is a condition of employment is not sufficient. See sec. 1.280F-6T(a)(2)(ii), Temporary Income Tax Regs., supra.

Petitioner argues that it was necessary that he purchase the computers because he needed to practice the technology in order

to pass the tests. However, both petitioner and Mr. Lee stated that it was not required by ITA that petitioner purchase the computers. Mr. Lee stated that petitioner took the course and purchased the computers because he is a qualified and dedicated employee. Petitioner testified that he made the decision to take the course on his own, and he did it as a contribution to "the city of Los Angeles and to all city taxpayers".

We are unpersuaded that petitioner's purchase of the computers was required as a condition of his employment. Although petitioner's knowledge of the new technology was helpful to ITA, petitioner has not established that the purchase of the computers was necessary to perform his duties. Mr. Lee stated that it was to petitioner's benefit that he learn new technology. Petitioner further benefited by being connected at home to the network at ITA which enabled him to do work from home which was more convenient for him than going into the office.

Petitioner also contends that he used the computers to prepare projects for work. However, before petitioner purchased the computers, he prepared the projects on his other personal computers when he could not prepare the projects at work due to time constraints.

Petitioners rely on Cadwallader v. Commissioner, T.C. Memo. 1989-356, affd. on another issue 919 F.2d 1273 (7th Cir. 1990), contending that the issues in Cadwallader are the same as the

instant issue. In Bryant v. Commissioner, T.C. Memo. 1993-597, the taxpayer, a teacher, was disallowed a deduction for a personal computer that she had purchased while there were computers provided for the teachers at the school where she worked. The taxpayer in Bryant also relied on Cadwallader to which we stated:

> In Cadwallader, both taxpayers made extensive use of a personal computer in furtherance of their professional duties. This Court found that, in view of the nature and scope of the required work load of the taxpayers (historical research that involved massive amounts of data and writing by the taxpayer-husband and extensive statistical work by taxpayer-wife in her job as transportation planner), the use of their personal computer was required to enable them to properly perform their respective duties of employment. This Court also found that the "convenience of employer" requirement was met because the taxpayers' purchase of a computer spared their employers the cost of providing them with a computer [neither petitioner was provided a computer by their employer]. We are unable to make such findings in the case before us. In short, the facts of Cadwallader are readily distinguishable.

We find the facts in the instant case are also readily distinguishable. Petitioner has not shown that he was required to purchase the computers or that the expense of purchasing them was ordinary and necessary to his employment. Petitioner also has not established that he would not have been able to perform the requirements of his job without the purchase of the computers. Therefore, petitioners are not entitled to a deduction of $10,456.

Respondent determined that petitioners are liable for the accuracy-related penalty under section 6662(a). Section 6662(a) provides that, if it is applicable to any portion of an underpayment in taxes, there shall be added to the tax an amount equal to 20 percent of the portion of the underpayment to which section 6662 applies. Section 6662(b)(1) provides that section 6662 shall apply to any underpayment attributable to negligence or disregard of rules or regulations. "Negligence" is defined as any failure to make a reasonable attempt to comply with the provisions of the Internal Revenue Code, and the term "disregard" includes any careless, reckless, or intentional disregard. See sec. 6662(c). A position with respect to an item is attributable to negligence if it lacks a reasonable basis. See sec. 1.6662-3(b)(1), Income Tax Regs.

Section 6664(c)(1) provides that the penalty under section 6662(a) shall not apply to any portion of an underpayment if it is shown that there was reasonable cause for the taxpayer's position with respect to that portion and that the taxpayer acted in good faith with respect to that portion. The determination of whether a taxpayer acted with reasonable cause and good faith within the meaning of section 6664(c)(1) is made on a case-by-case basis, taking into account all the pertinent facts and circumstances. See sec. 1.6664-4(b)(1), Income Tax Regs.

Petitioners have failed to show that the purchase of the computers was ordinary and necessary to petitioner's employment and that it was required as a condition of his employment. Furthermore, petitioners conceded certain Schedule A and Schedule C expenses without explanation as to why they are not liable for the accuracy-related penalty. Accordingly, petitioners are liable for the accuracy-related penalty under section 6662(a).

Reviewed and adopted as the report of the Small Tax Case Division.

To reflect the foregoing,

Decision will be entered for respondent.