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INCOME TAX—EXPENSES OF ATTENDING TAX
INSTITUTE HELD DEDUCTIBLE

Member of a law firm attended an annual tax institute to obtain current tax knowledge and then deducted the expenses on his personal income tax return. *Held*, reversing the Tax Court: Such expenses are deductible under § 23 (a) (1) (A) of the Internal Revenue Code. *Coughlin v. Commissioner*, 203 F. 2d 307 (2d Cir. 1953).

“In computing net income there shall be allowed as deductions . . . all the *ordinary and necessary* expenses . . . in carrying on any trade or business” INT. REV. CODE § 23 (a) (1) (A) [italics added].

What is ordinary and necessary is a question of fact to be decided in each individual case. *Commissioner v. Heininger*, 320 U. S. 467, 470 (1943); *Helvering v. Highland*, 124 F. 2d 556, 562 (4th Cir. 1942).

Expenses of attending professional conventions have consistently been held to be deductible as ordinary and necessary business expenses, *e. g.*, doctor at medical convention, *Coffey v. Commissioner*, 21 B. T. A. 1242 (1931); lawyer at American Bar Association convention, *Ellis v. Commissioner*, 15 B. T. A. 1075 (1929); chemist at scientific conventions, *Silverman v. Commissioner*, 6 B. T. A. 1328 (1927); and clergyman at church convention, *Shutter v. Commissioner*, 2 B. T. A. 23 (1925).

Traveling expenses of chemists taking refresher courses were also held to be deductible, *Pacific Grapes Products Co. v. Commissioner*, 17 T. C. 1097 (1952), as were the expenses of attending summer school where they were not to improve taxpayer's situation but rather to maintain her teaching position. *Hill v. Commissioner*, 181 F. 2d 906 (4th Cir. 1950).

The courts have held educational expenses to be personal and non-deductible when they “bettered” or “improved” the taxpayer's position, *e. g.*, those of writing a doctoral dissertation, *Lampkin v. Commissioner*, 11 T. C. M. 576 (1952); of studying in Europe to increase prestige, *Cardozo v. Commissioner*, 17 T. C. 3 (1951); of obtaining a degree in engineering, *Larson v. Commissioner*, 15 T. C. 956 (1950); and of receiving vocal instructions anticipating singing engagements, *Driscoll v. Commissioner*, 4 B. T. A. 1008 (1926).

The Commissioner originally ruled that a teacher's expenses for attending summer school courses, O. D. 892, 4 CUM. BULL. 209 (1921), and a doctor's expenses for post graduate courses, O. D. 894, 5 CUM. BULL. 171 (1921), were personal and therefore not

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deductible. INT. REV. CODE § 24 (a) (1). In order to conform to the *Hill* case, he modified O. D. 892, *supra*, but interpreted this case in an attempt to limit its implications. I. T. 4044, 1951—1 CUM. BULL. 16. This ruling emphasized that the court stressed the fact that the taxpayer incurred the expenses to maintain her position; to preserve, not to expand or increase; to carry on, not to commence.

In the instant case the court used the *Hill* case as the basis for its decision. Coughlin did considerable work which required him to be skilled in federal taxation. Therefore, a knowledge of recent developments was necessary to maintain his position.

It appears that the opinion in the *Coughlin* case may leave room for a contention that such expenses might not be deductible to a lawyer not particularly engaged in the practice of tax law. But since current tax law permeates all fields of law, and knowledge of it is a necessity for all lawyers, this view would be highly unrealistic and unfortunate. The Tax Court should be first to realize this.

Hubert J. Holler

INCOME TAX—TREASURY STOCK DIVIDENDS HELD TO BE TAXABLE

A corporation with only common stock agreed to repurchase the interest of its majority stockholder after three contracts for the purchase of this interest by the taxpayer-stockholders individually had been cancelled. A lease of the corporation's premises was executed as part of the consideration in all these contracts. Previously, the taxpayers had been instrumental in the corporation's repurchase of the interest of two minority stockholders pursuant to an agreement to resell to them after the acquisition of the majority interest. Upon the acquisition of the majority interest a pro-rata distribution of this newly purchased treasury stock was made to the shareholders of record. Subsequently, the two minority stockholders repurchased their shares. *Held*: The distribution was a taxable stock dividend. *Schmitt v. Commissioner*, 20 T. C. No. 44 (May 14, 1953).

A common stock dividend to common shareholders was held to be a non-taxable stock dividend where there was no change in the stockholder's proportionate interest. *Eisner v. Macomber*, 252 U. S. 189 (1919); *Helvering v. Griffiths*, 318 U. S. 371 (1942). However, a common stock dividend to preferred stockholders is a taxable stock dividend because it either changes the proportionate interest or the character of the stockholder's ownership.