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TAXATION-INCOME TAX-DEDUCTIONS-EXPENSES INCURRED IN THE PURSUIT OF BUSINESS-COMMUTER EXPENSE

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TAXATION—INCOME TAX—DEDUCTIONS—EXPENSES INCURRED IN THE PURSUIT OF BUSINESS—COMMUTER EXPENSES—The taxpayer, a lawyer, had resided in Jackson, Mississippi for approximately thirty-five years, and had maintained a law office there for more than twenty years. In 1927 he accepted a position as general solicitor for a railroad whose main office was in Mobile, Alabama. Although the taxpayer's work was devoted entirely to the railroad's business, he refused to abandon his long established connections in Jackson because his position was yearly, appointive, and therefore uncertain. Arrangements were made with the railroad whereby the taxpayer allocated his time between the two cities, but also bore the traveling expenses between, and the living expenses in, both cities. While the taxpayer's main post of business was in Mobile, he worked most of the time in Jackson during the tax years in question, 1939 and 1940. He took deductions for the expenses incurred in making seventy-three trips between the cities, and also for the living expenses while in Mobile. The circuit court [1] reversed the Tax Court's [2] disallowance of the deductions. Certiorari was granted because of a conflict in lower court decisions as to the meaning of the word "home." *Held*, whether or not the expenses were incurred while away from home, they were not incurred in the pursuit of business, and therefore were not deductible from gross income under Section 23 (a) (1) (A) of the Internal Revenue Code.[3] *Commissioner v. Flowers*, (U.S. 1946) 66 S.Ct. 250.

While the Supreme Court recognizes that the meaning of the world home "has engendered much difficulty and litigation," it did not find it necessary to resolve the conflict among the lower courts.[4] This is unfortunate for the unenlightened. But it also has another result in that it removes any reason for the Court's discussion of the *Dobson* rule.[5] The basis of the Tax Court's opinion is that "the situation presented in this proceeding is, in principle, no different from that in which a taxpayer's place of employment is in one city and for reasons satisfactory to himself he resides in another." [6] This opinion appears to revolve around the meaning of "home"; and so the lower court treated it. The

[1] Flowers v. Commissioner, (C.C.A. 5th, 1945) 148 F. (2d) 163.

[2] 463 CCH. STANDARD FED. TAX SERV. (1946) ¶ 19,820.

[3] Deductions from gross income include "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business . . . ."

[4] Principal case at 4065. The circuit court in the principal case discarded the special meaning given the word "home," while in Barnhill v. Commissioner, (C.C.A. 4th, 1945) 148 F. (2d) 913, the court upheld a tax court decision construing "home" to mean the taxpayer's place of business.

[5] In Dobson v. Commissioner, 320 U.S. 489, 64 S. Ct. 239 (1943), it was held that the Tax Court's findings of fact are not reviewable. Since the Supreme Court based its decision in the principal case on a different ground than that of the Tax Court, it is difficult to see what relevance the Dobson rule has to the issue.

[6] 463 CCH STANDARD FED. TAX SERV. (1946) ¶ 19,820.

Supreme Court determines that even if a definition of home was implicit in the Tax Court's opinion, and "even if that was erroneous," the opinion should be upheld.[7] The Court justifies the Tax Court's determination on the ground that the expenses were not incurred in the pursuit of business. The expenses "were incurred solely as the result of the taxpayer's desire to maintain a home in Jackson while working in Mobile, a factor irrelevant to the maintenance and prosecution of the railroad's legal business." [8] From the language in the Supreme Court's decision it seems that had the taxpayer made but two or three trips, or had been employed only for a short time, the expenses would not be deductible even then. It appears however that the Tax Court does not go this far since it apparently desires to distinguish the principal case from two other cases which involved "short-term or temporary employments." [9] The Tax Court theory appears to be based on the idea that permanent or yearly employment establishes a home at the place of business. The theory of the Tax Court goes no further than the facts of this case; on the other hand, the scope of the Supreme Court's decision is not limited to this case. Nor is this the limit to the uncertainty created by the principal decision. The Court consistently speaks of the expenses as being not necessary to the business of the railroad, not in the pursuit of the railroad's business, and not for the benefit of the railroad. The statute is concerned with deductions of expenses incurred by the taxpayer in carrying on a business. Apparently deductions for expenses have been allowed in numerous cases where they were neither necessary to the employer's business, nor in pursuit thereof, nor for the benefit thereof.[10] Where Congress and the Treasury are concerned with the income of a taxpayer, it appears that the deductible expenses incurred in procuring that income are the expenses of the procurer, the taxpayer, and not those of other persons with whom he may have dealings. It seems that the exclusion of commuting expenses from allowable deductions is not based on a failure to recognize that in many instances they are necessary, but rather on the administrative and accounting difficulties that might be encountered in cases where taxpayers use their own equipment in going to and from work. It is submitted that any extension of such non-deductible expenses should be left to legislation by the appropriate branch of government.

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[7] Principal case at 4065. The circuit court held that the Tax Court's determination that this case presented a commuter situation was based on the definition of "home" as the taxpayer's place of business; the dissent in the principal case held the same.

[8] Principal case at 4065 and 4066.

[9] 463 CCH STANDARD FED. TAX SERV. (1946) ¶ 19,820.

[10] Colburn v. Commissioner, (C.C.A. 2d, 1943) 138 F. (2d) 763. Harry F. Schurer, 3 T.C. 544 (1944). In Wallace v. Commissioner, (C.C.A. 9th, 1944) 144 F. (2d) 407, the special tax meaning given the word "home" was discarded.