

Tax Notes

Letters to the Editor

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SALT AND TWITTY BURGERS DON'T MAKE A DIGESTABLE ARGUMENT.

To the Editor:

I read with interest the Report in Brief of the article by John Dorocak, "Some Good News for O.J.?" which appeared in the July 21, 1997 Tax Notes (p. 429). It is a precis of a longer article that appeared in 15 Akron Tax Journal (June 1997). I will admit that I have not yet read the longer Akron Tax Journal article, but only the Tax Notes summary. I was both surprised by and pleased with the article summary, but I disagree with its conclusion.

The basic arguments that Mr. Dorocak makes concerning the asserted deductibility of O.J. Simpson's legal defense costs are interesting, and he seems to be referring to most of the right cases and principles. The author quite properly begins with the broad prohibition set forth by the Supreme Court in *United States v. Gilmore*, 372 U.S. 39 (1963), which denied legal fee deductions for a divorce action even though the consequences of the legal claims were to the taxpayer's business. The fact that the business was affected did not convert the legal dispute into one arising out of the business. Mr. Dorocak goes on to discuss a number of other cases in which there is some stronger connection between the criminal activity that was the subject of the legal expenses and the business.

However, I am not convinced that any of these arguments (based on the manner in which the business will be affected) is convincing. One of the arguments that Mr. Dorocak says that Simpson's lawyer put forth was that the police intentionally framed this successful black defendant to destroy his prosperity. Dorocak goes on to say that this kind of defense ties in well with some of the case law, showing a connection between the murder charges against Simpson and his various business activities as an entertainment and sports figure.

The case Dorocak relies on for his proposition in *Salt v. Commissioner*, 18 T.C. 182 (1952), where the Tax Court allowed a movie scriptwriter to deduct legal expenses involved in appearing before the House Committee on Un-American Activities investigating charges of Communist infiltration in the motion picture industry. Another case in which Mr. Dorocak finds support is *Jenkins v. Commissioner*, 10 T.C.M. 1983-667 (1983), where the Tax Court allowed singer Conway Twitty to deduct the payments (of debts to third parties, but not legal expenses) he made on behalf of his Twitty Burger Restaurants, purportedly to protect his music business reputation.

Ultimately, I just don't find any of the contra-Gilmore notions convincing, despite the case law that Mr. Dorocak cites. I even sensed that Mr. Dorocak might not be convinced himself. Legal expenses incurred in a murder defense just aren't section 162 or section 212 expenses. Interesting arguments aside, I just don't see it.

Very truly yours,

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