



letters to the editor

The Taxing Matter Of Bill's Legal Bills

To the Editor:

I enjoyed Lee Sheppard's recent article about the tax treatment of President Clinton's legal expenses. See Sheppard, "Clinton Defense Fund II: What Was the Bill From the Tax Lawyers?" *Tax Notes*, Mar. 9, 1998, p. 1226. Apart from the interesting issues regarding the status of the defense fund and the tax treatment of contributions to it, I have a few observations about the deductibility issue raised at the end of Lee Sheppard's article.

There is certainly an argument that the considerable legal expenses incurred by President Clinton in the Monica Lewinsky matter would be nondeductible under section 162 because their origin is personal. The seminal case, as Ms. Sheppard points out, is *U.S. v. Gilmore*, 372 U.S. 39 (1963). I think Ms. Sheppard is right that because the Lewinsky episode allegedly occurred while Clinton was in office, a deduction for defending against the allegations is arguably appropriate.

Although Ms. Sheppard is correct that Revenue Rulings 74-394, 1974-2 C.B. 40 (judge allowed to deduct defense costs against charges of misconduct in office) and 71-470, 1971-2 C.B. 121 (public official allowed to deduct defense costs against a voter recall) are pertinent, they may not be dispositive. Indeed, the Service has successfully litigated a number of cases where legal expenses (and/or settlement payments) have been disallowed. In litigating the tax treatment of legal fees from disciplinary and license proceedings, for example, taxpayers have often lost, despite what appeared to be a substantial nexus between the legal problems and the business conducted. In *McDonald v. Commissioner*, 592 F.2d 635 (2d Cir. 1978), a lawyer was denied a deduction for amounts paid to settle a threatened lawsuit to contest a will that made several bequests to the lawyer. The origin of the claim, said the court, was personal. Similarly, in *Sheldon Soliman v. Commissioner*, T.C. Memo. 1974-127 (1974), an accountant was denied a deduction for expenses resulting from the settlement of a lawsuit against him for misappropriation of his father's funds. Again, the court determined the matter was personal.

Notwithstanding such authorities, I believe, as apparently does Ms. Sheppard, that the legal fees paid (if any are really being paid by President Clinton) would be deductible under section 162. That truly seems to blur the efficacy of the age-old origin of the claims test. Anyway, despite the marginal applicability of the case,

I take some comfort in *Richard C. Lussy v. Commissioner*, T.C. Memo. 1995-393 (1995), *aff'd without opinion*, 114 F.3d 1201 (11th Cir. 1997); *rehearing en banc denied*, 121 F.3d 724 (11th Cir. 1997). Mr. Lussy was running for election as the local property tax appraiser. He was cited for running a stop sign in an area known for drugs, and remarked to the citing police officer that he was in the area looking for a woman. (Mr. Lussy was clearly not as gifted as Mr. Clinton in the art of explanation.) The officer included this statement in the court information sheet. Mr. Lussy then filed suit against the police officer, incurring over \$18,000 in legal fees. Mr. Lussy got no deduction, no judgment against the police officer (and apparently no woman). He also lost the election.

Very truly yours,

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