TAX DIVISION, PAINTED DESERT DISTRICT, TOON CIRCUIT

No. 1956-TOON-0001

Coyote v. Desert Revenue Service

3 F.C. Tax 45 (Toon Cir., Tax Div. 1956)

Refund action on cross-motions for summary judgment · Decided November 18, 1956 · Harding, J.

Facts inspired by the Road Runner shorts (1949–1956); law inspired by Welch v. Helvering (U.S. 1933) and Commissioner v. Groetzinger (U.S. 1987).

FICTIONAL LEGAL SATIRE. NOT LEGAL AUTHORITY.

SYLLABUS

> Refund action following disallowance of deductions for dynamite, rocket skates, magnets, anvils, a portable hole, a dehydrated boulder and associated freight, all purchased from the Acme Corporation in pursuit of a roadrunner. Held: (1) plaintiff's predation is a trade or business under Sylvester v. Gonzales notwithstanding eleven years without a capture; (2) consumable instrumentalities of pursuit are ordinary and necessary expenses under D.R.C. § 162; (3) durable assets, including the portable hole and the dehydrated boulder, must be capitalized; (4) medical expenses and meals are personal; (5) the Code taxes economic activity and does not grade it. Judgment for plaintiff in substantial part.

HEADNOTES

[1] 240GAG162(1) · **Taxation: Trade or business.** Predation. A pursuit that occupies all waking hours, supported by 327 invoices and no other occupation, is a trade or business. Success is not an element. Sylvester followed.

[2] 240GAG162(4) · **Taxation: Ordinary and necessary.** Equipment that fails on every use. That an expense is expensive, hazardous and ineffective does not make it personal. The Code does not grade business judgment.

[3] 240GAG263(2) · **Taxation: Capital expenditure.** Durable assets. A portable hole and a dehydrated boulder are durable and must be capitalized and depreciated.

[4] 240GAG262(1) · **Taxation: Personal expenses.** Medical care following an explosion and meals consumed while waiting for a bird are personal.

OPINION · HARDING, J.

¶ 1 HARDING, J. Plaintiff Wile E. Coyote seeks a refund of income taxes assessed following the Desert Revenue Service's disallowance of deductions claimed for expenditures incurred in connection with his occupation as a professional predator.

¶ 2 The challenged expenditures include, among other things, dynamite, rocket-powered roller skates, giant horseshoe magnets, spring-loaded boxing gloves, iron bird seed, an artificial female roadrunner costume, a Burmese tiger trap, one "portable hole," several anvils, a catapult, a weather balloon, one dehydrated boulder, and freight charges associated with the delivery of the foregoing merchandise by the Acme Corporation. The Revenue Service determined that these expenditures were "personal, recreational, irrational, or so inherently unlikely to produce income as to fall outside any cognizable trade or business." Coyote paid the resulting deficiency and brought this refund action. The facts are largely undisputed. The legal question is not. The Court concludes that most of the challenged expenditures are deductible as ordinary and necessary expenses of plaintiff's trade or business. Some are not. The parties' cross-motions for summary judgment on a stipulated record are resolved as set forth below, and judgment shall be entered for plaintiff in substantial part.

I. FACTUAL BACKGROUND

¶ 3 For more than eleven years, plaintiff has engaged continuously in the pursuit of Geococcyx californianus, commonly known as the Greater Roadrunner. The pursuit is neither occasional nor recreational. Plaintiff's daily activities consist principally of locating the Roadrunner, studying its movements, designing capture mechanisms, purchasing specialized equipment, constructing traps, testing machinery, placing bait, conducting high-speed pursuit, and recovering from injuries sustained during the foregoing activities.

¶ 4 The evidence establishes that plaintiff devotes virtually all waking hours to these efforts. He maintains no separate occupation. His business records, though unusual in certain respects, are extensive. Plaintiff introduced into evidence 327 invoices from the Acme Corporation covering tax years 1952 through 1955. The invoices document purchases of industrial adhesives, explosives, mechanical devices, aviation equipment, geological implements, bait, structural steel, paint, costumes, rockets, magnets, firearms, compressed springs, ropes, pulleys, anvils, and miscellaneous devices whose commercial purpose is not immediately apparent from their nomenclature. Plaintiff testified that each item was acquired for the sole purpose of capturing the Roadrunner.

¶ 5 The Government offered no evidence that plaintiff used any challenged item for entertainment, household purposes, or any activity unrelated to predation. It is equally undisputed that plaintiff has never successfully captured the Roadrunner.

II. THE STATUTORY FRAMEWORK

¶ 6 Section 162(a) of the Desert Revenue Code permits deduction of: "all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade, business, vocation, or profession." D.R.C. § 162(a).

¶ 7 Section 262 disallows "personal, living, recreational, or other nonbusiness expenditures." D.R.C. § 262. The statute contains no profitability requirement. Nor does it condition deductibility upon wisdom. That distinction is central to this case. The Revenue Service repeatedly emphasizes that plaintiff's purchases were "foolish," "dangerous," "grossly disproportionate to any conceivable return," and "objectively absurd." Some of those descriptions are difficult to contest. They do not decide the case. Tax law does not generally permit the Government to substitute its business judgment for that of the taxpayer. The Commissioner may question whether an expenditure was made; he may question whether it was business-related; he may not disallow it merely because the taxpayer's plan was idiotic.

III. COYOTE IS ENGAGED IN A TRADE OR BUSINESS

¶ 8 The Government first argues that plaintiff's activities do not constitute a trade or business because they have never generated revenue. That argument is foreclosed by Sylvester v. Gonzales, 12 F.C. App. 1 (Toon Cir. 1955). There, the Court of Appeals held that predatory pursuit constitutes an occupation where the activity is characterized by continuity, specialization, vocational purpose, and pursuit of material subsistence.

¶ 9 The Court expressly rejected the proposition that successful capture of prey is a prerequisite to professional status. As the court memorably observed: "Success is not an element of employment." Id. at 9. The present record satisfies Sylvester several times over. Coyote's efforts are continuous. His equipment is specialized. His pursuits are undertaken for subsistence. His affairs are organized almost entirely around the Roadrunner. Indeed, if plaintiff is not in the predator business, it is difficult to identify what else he has been doing for the past decade. The Revenue Service suggests that eleven consecutive years of failure convert the activity into a hobby. The Court disagrees. A losing business is still a business. A catastrophically losing business may still be a business. The Code contains no provision transforming an occupation into recreation merely because the taxpayer is bad at it.

IV. "ORDINARY" DOES NOT MEAN SENSIBLE

¶ 10 The Government next argues that the challenged expenditures are not "ordinary." This argument rests upon a misunderstanding of the statutory term. An expense need not be commonplace in society generally. It need only be of a kind ordinarily associated with the taxpayer's particular trade. Thus, ammunition may be ordinary for a hunter though not for an accountant. Greasepaint may be ordinary for a theatrical performer though not for a dentist.

¶ 11 Dynamite may be ordinary in demolition though decidedly unusual in floristry. The relevant comparison is occupational. Professional predation of unusually fast desert birds is a narrow field. The record contains testimony from two expert predators, Sylvester J. Pussycat and Claude Cat, each of whom confirmed that traps, bait, pursuit devices, disguises, mechanical contraptions, and occasionally explosives are recognized tools of the trade. Mr. Pussycat further testified that "you use what works." On cross-examination, the Government elicited that very little of his equipment had, in fact, worked. That testimony affects weight only slightly. An expense does not cease to be ordinary because the profession as a whole has a disappointing success rate.

V. "NECESSARY" DOES NOT MEAN INDISPENSABLE

¶ 12 The Government fares no better under the term "necessary." An expense is necessary when it is appropriate and helpful to the taxpayer's business. It need not be indispensable. Coyote's purchases satisfy that standard in substantial part. A net may help capture a bird. A trap may help capture a bird. A rocket may help close a speed differential. A magnet may be useful where the bird has first been induced to ingest iron pellets. Whether these plans were advisable is a different question.

¶ 13 The Court's role is not to ask whether a prudent predator would have proceeded differently. Were prudence the measure of deductibility, a substantial portion of American enterprise would be placed in jeopardy.

VI. THE CHALLENGED EXPENDITURES

A. Explosives

¶ 14 The Revenue Service disallowed $3,412 for dynamite, detonators, blasting caps, and related materials. The evidence establishes that plaintiff used these items exclusively in attempted capture operations. Explosives are dangerous. They are also widely used commercially.

¶ 15 The Government identifies no statute prohibiting their use in plaintiff's occupation during the relevant years. The deductions are allowed. That plaintiff frequently stood on the wrong side of the explosive device does not alter its business purpose.

B. Rocket-Powered Devices

¶ 16 Plaintiff deducted $6,711 for rocket skates, rocket sleds, rocket belts, and propulsion units. The Government argues that no reasonable businessperson would strap himself to a rocket. Perhaps. But § 162 does not establish a reasonable-businessperson test. The undisputed evidence demonstrates that the Roadrunner possesses exceptional speed.

¶ 17 Plaintiff purchased propulsion devices to overcome that competitive disadvantage. The expenses are deductible. Repairs to cliffs, canyon walls, tunnels, and plaintiff himself are addressed separately below.

C. Giant Magnets and Iron Bird Seed

¶ 18 This category requires more analysis. Plaintiff purchased a giant electromagnet for $2,840 and 700 pounds of iron bird seed for $614. His theory was that the Roadrunner would consume the metallic seed and thereafter be drawn toward the magnet. The Government calls this "facially preposterous." The Court agrees that the plan contains weaknesses. But the expenditures were coordinated components of a business strategy directed solely toward capture of plaintiff's quarry. Neither item had personal use. Both are therefore deductible. The Court notes that the Roadrunner apparently consumed the iron bird seed without suffering any material reduction in speed. That unfortunate result does not retroactively convert the purchase into a personal expenditure.

D. The Artificial Female Roadrunner

¶ 19 Plaintiff deducted $219.95 for a Roadrunner costume, lipstick, false eyelashes, perfume, and related theatrical materials used to impersonate a female Roadrunner. The Revenue Service argues that cosmetics and clothing are inherently personal. Usually they are. But clothing not adaptable to ordinary personal use may constitute a business expense: an opera wig, a Viking helmet, or a brassiere worn only on the stage is a costume, not a wardrobe. No evidence suggests plaintiff wore the female Roadrunner costume socially.

¶ 20 The Court has examined Government Exhibit 14. It is difficult to imagine an occasion on which he reasonably could. The deduction is allowed.

E. The Portable Hole

¶ 21 Plaintiff claimed $499 for one Acme Portable Hole. The invoice describes the item as "a transportable two-dimensional aperture suitable for temporary passage through otherwise solid surfaces." The Government argues that the purported product "defies known principles of geometry, engineering, and physics." That may be so. But the invoice is authentic, payment is documented, and the Government does not dispute that the device functioned. Indeed, Government counsel conceded at oral argument that plaintiff

successfully placed the hole on the side of a rock formation and that the Roadrunner passed through it.

¶ 22 The Government's objection is therefore somewhat difficult to understand. A functioning portal purchased solely to facilitate capture of prey is a business asset. Because the portable hole had a useful life extending beyond the taxable year, however, its cost must be capitalized and depreciated rather than immediately deducted.

¶ 23 Judgment will be entered accordingly.

F. The Dehydrated Boulder

¶ 24 The dehydrated boulder presents a closer question. Plaintiff purchased from Acme a small packet labeled: DEHYDRATED BOULDER - JUST ADD WATER. After adding water, the product expanded into a boulder of approximately twenty tons. Plaintiff intended to roll it from a cliff onto the Roadrunner. The boulder instead rolled backward.

¶ 25 Plaintiff claims the purchase price as an ordinary expense. The Court agrees that the acquisition was business-related. But a boulder is property of a durable nature. Its expansion does not alter that conclusion. The cost must therefore be capitalized.

¶ 26 Plaintiff argues that the boulder ceased to exist shortly after acquisition because it fell into a canyon. If plaintiff can establish abandonment or destruction during the same taxable year, he may be entitled to a loss deduction under § 165. The present record is insufficient to resolve that issue.

G. Anvils

¶ 27 Plaintiff purchased seventeen anvils during the years at issue. The Government contends that this quantity is "prima facie evidence of either personal collecting or compulsive behavior." The record shows otherwise. Each anvil was suspended, dropped, launched, or otherwise incorporated into a capture mechanism. None remained in plaintiff's possession at year-end. Three struck plaintiff. Five fell into canyons. Four were destroyed. Two were carried away by unknown means. One became embedded in a highway. One remains suspended above a desert trail, its current status uncertain.

¶ 28 The final anvil was last observed attached to a balloon over Nevada. The Court finds no evidence of collecting. The deductions are allowed.

H. Painting Tunnels on Rock Walls

¶ 29 Plaintiff purchased paint and brushes used to create realistic images of highway tunnels upon solid rock formations. The Government argues that "painting a tunnel where no tunnel exists cannot reasonably further the capture of a bird." That proposition would ordinarily be persuasive. The evidence here, however, presents a complication. On at least four documented occasions, the Roadrunner entered the painted tunnel and emerged from the opposite side of the rock. Plaintiff then attempted to follow and collided with the wall.

¶ 30 The Government has offered no coherent explanation for this phenomenon. Nor has it explained why the Roadrunner's repeated successful use of the painted tunnels should render plaintiff's attempt to use the same method unreasonable as a matter of tax law. The expense is allowed.

VII. SOME EXPENSES ARE NONDEDUCTIBLE

A. Medical Expenses

¶ 31 Plaintiff seeks to deduct as business expenses the cost of treating fractures, burns, flattening injuries, electrical injuries, explosive trauma, and what his physician described as "accordion-like compression of the torso." These expenses may have arisen from plaintiff's occupation, but personal medical expenditures remain governed by the Code's medical-expense provisions. They are not deductible under § 162.

B. Meals

¶ 32 Plaintiff deducted bird seed consumed personally while awaiting the Roadrunner. Meals remain personal expenditures absent a statutory exception. The deduction is disallowed. The Court recognizes the irony of allowing deduction for bird seed intended for the Roadrunner while disallowing identical seed consumed by plaintiff. Tax law contains many such distinctions.

C. The "Free Bird Seed" Sign

¶ 33 Plaintiff claims depreciation on a wooden sign bearing the words "FREE BIRD SEED." The Court finds the sign to be a business asset. But plaintiff also seeks a charitable-contribution deduction on the theory that the offered seed constituted a gift to the Roadrunner. That position is untenable. A transfer designed to lure the recipient into a concealed trap lacks donative intent. The charitable deduction is disallowed.

D. Funeral Expenses

¶ 34 Plaintiff claimed a contingent deduction for “anticipated funeral and memorial costs.” The deduction is premature. Plaintiff remains alive. Barely, on several occasions, but alive nonetheless. VIII. THE GOVERNMENT’S PUBLIC-POLICY ARGUMENT The Revenue Service finally argues that permitting these deductions would offend public policy by subsidizing dangerous conduct. The doctrine is narrower than the Government suggests. Congress knows how to disallow particular expenditures when it wishes to do so.

¶ 35 The Court will not create a general “reckless business plan” exception to § 162. Nor would such an exception be administrable. Judges are poorly situated to determine when entrepreneurial optimism becomes delusion. The line would be particularly difficult to draw in plaintiff’s industry. Coyote is engaged in a lawful occupation. His purchases were genuinely made in furtherance of that occupation. The fact that many caused him catastrophic bodily harm does not make them personal.

¶ 36 The Government may regulate explosives. It may regulate rockets. It may regulate canyon-based hunting. But it may not use the Desert Revenue Code as a general licensing regime for common sense. IX. CONCLUSION The Court therefore holds: 1. Plaintiff is engaged in the trade or business of professional predation. 2. Expenditures for explosives, rocket-powered pursuit devices, magnets, iron bird seed, specialized disguises, anvils, traps, bait, painted-tunnel supplies, and comparable equipment are deductible under § 162 when purchased and used primarily in furtherance of that trade or business. 3. Durable assets, including the portable hole and dehydrated boulder, must be capitalized and depreciated or otherwise treated under the Code’s applicable basis and loss provisions. 4. Personal medical expenses and meals are not deductible as trade or business expenses. 5. The Court expresses no view regarding the wisdom of plaintiff’s business model.

¶ 37 That last point is important. The Desert Revenue Service has demonstrated beyond serious dispute that plaintiff’s methods are expensive, hazardous, technologically questionable, and almost entirely ineffective. But the Desert Revenue Code taxes economic activity. It does not grade it. A taxpayer is entitled to deduct the ordinary and necessary expenses of his business even when the business consists largely of purchasing elaborate machinery with which to injure himself in the unsuccessful pursuit of a bird.

¶ 38 Judgment shall be entered consistent with this opinion. SO ORDERED.

¶ 39 Following submission of this matter, the Court received by overnight delivery an unsolicited Acme Corporation catalog addressed to chambers. The catalog advertises, among other products, an “Instant Litigation Kit,” a “Self-Arguing Brief,” and a “Portable Precedent Generator.” The Clerk is directed to return the catalog unopened. The Court has enough problems.

EDITOR'S NOTE

Drafted by machine in the voice of Judge Harding. Edited and entered for the Court by R. Quince , a member of the bench and bar.

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