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MEMORANDUM

Income Tax Determinations
A-2
Strasberg, Susan

TO: Commissioners Murphy, Palestin and Macduff

FROM: Francis X. Boylan, Hearing Officer

SUBJECT: SUSAN STRASBERG, Application for Revision or Refund of an Assessment of Personal Income Taxes for the Year 1957

A hearing with reference to the above matter was held before me at 80 Centre Street, New York, New York, on May 12, 1964. Appearances are shown in the record. The record of testimony and the exhibits are submitted herewith.

The two issues in this case both have to do with the question of what constitutes an "ordinary and necessary expense" in carrying on a trade or business or for the production of income, under Tax Law Section 160, and related regulations.

The taxpayer, an actress, claimed wardrobe expenses of \$10,792.15 as an ordinary and necessary expense of her profession. The notice of additional assessment disallowed \$7,500 of the amount claimed for wardrobe, in effect allowing the remaining amount of about \$3,292 as an ordinary and necessary expense. She further claimed the amount of \$20,600, assertedly paid out for dramatic coaching and tutoring fees, as such a deductible expense. The amount claimed for dramatic coaching was initially disallowed entirely but thereafter \$5,000 was allowed.

The proposed determination upholds the additional assessment disallowing the amount of \$7,500 out of the amount claimed deductible for wardrobe. The taxpayer, it was found, failed to show that any part of her total expenditures for clothing and accessories were for "wardrobe" used professionally. Consequently, the amount of \$3,292 which was allowed was not inadequate, the determination in effect holds.

As to the amount claimed as deductible for dramatic coaching fees, the proposed determination allows the amount of \$20,000 as a deductible expense under the pertinent regulations governing expenditures for education. The taxpayer transferred \$20,000 to her parents. She claimed \$20,600, the full amount of income reported by her mother, Paula Strasberg in 1957, but the

remaining \$600 was unsubstantiated, it is found.

The taxpayer, an actress about eighteen (18) years of age in 1957 actually expended the amount of \$14,389.54 for clothing and accessories in that year. These expenditures were proved by cancelled checks to various stores which were exhibited at the hearing and returned to the taxpayer's representative. The taxpayer treated 25 per cent of this expenditure as being personal and nondeductible but claimed a deduction for the remaining 75 per cent in the amount of \$10,792.15.

At the preliminary hearing the examiner was disposed to allow all but \$4,000 of the claimed expenditure but this was contingent upon the taxpayer's accepting a disallowance of the claimed expenditure for dramatic coaching except \$5,000.

At no stage did the taxpayer or her representative show that any of this clothing purchased was a costume or wardrobe used by the taxpayer in any role as an actress. An affidavit was to have been submitted by the taxpayer making such identification but this was not done.

Tax Law Section 360 provides in part that there should be allowed as deductions ordinary and necessary expenses paid out in carrying on any trade or business or for the production of income required to be reported.

By regulation expenditures directly related to the operation of the taxpayer's "business" are provided for in regulation 20 NYCRR 253.1. Similarly, regulation 20 NYCRR 253.5 provides for the deduction of expenditures so directly related to the practice of a profession. The specific items enumerated in the latter regulation do not include the expenditures herein under consideration, but there is no question but that wardrobe used by an actress in a professional role is a deductible professional expenditure, at least if the clothing is used exclusively for that purpose. This was the rule applied by the Department and by the preliminary examiner, that is, that the expenses claimed for wardrobe by an actress must be for clothes acquired and used as a costume in a dramatic role, and further must have been used exclusively for that purpose. Under a comparable Federal regulation, the cost of maintenance for uniforms and work clothes by a tradesman are deductible if they are not suitable for wear off duty. In the professional area, the

formal dress clothes of a musician used professionally are deductible expenditures. (Prentice Hall Federal Taxes (Current) Paragraph 11,214; same in 1957 paragraph 11,717; Wilson John Fisher (the musician) 23 TC 218, 230 Federal 2d 79) The difficulty here is that there was no showing at all that the clothing expenditures included professional costumes or wardrobe used in any of the taxpayer's roles as an actress. The taxpayer's representative was unable to testify to the practice in the profession or that the wardrobes so used professionally by the taxpayer were not supplied to her free.

Regulation 20 NYCRR 253.17 --Items Not Deductible-- provides that no personal and living expenses may be deducted except for medical care and insurance premiums. Clothing for personal use is such an item not deductible.

20 NYCRR 253.2 governs expenditures not so directly related to the taxpayer's "business", or by extension, profession. It is not critical whether an expenditure for wardrobe be regarded strictly as a direct professional expense under that regulation or as an expense related to the production of income under regulation 253.2. The latter regulation provides, however, in part that expenses to be deductible must be reasonable in amount and must bear a reasonable relation to the production of taxable income. There is no authority for the proposition that clothing used by an actress in furtherance of her career that is used not as wardrobe on stage or before camera, but for the sake of creating an image on his or her public appearances is a deductible expense. Such expenditures evidently are not regarded as sufficiently closely related to the production of income.

It is no doubt true that professionals in careers, such as an actress, make expenditures for clothing other than wardrobe, which can be said to be a prudent investment in the circumstances and which, except for their careers, they would not need or even want. Nevertheless in view of the stricture on expenditures for uniforms etc., of persons in trades, it would not appear to be equitable to allow such expenditures to persons in a more public career. Further it would be difficult administratively to determine what careers would warrant such expenditures, and which expenditures were so career-related.

There is authority for the proposition that clothing acquired by a person launching a career but not yet gainfully

engaged in it is not deductible. Further, as has been indicated, there is no authority for the proposition that clothing not immediately related to the professional effort such as a musician's formal clothing, or an actress's on stage costumes, is deductible.

Whether the further requirement that clothing so acquired as a professional costume is nonetheless taxable if not used exclusively for that purpose is too stringent in view of the provision above stated that a deductible expenditure need only bear a reasonable and proximate relation to the production of income is a question not presented here. Such a rule, literally read, would not permit an apportionment of the expenditures for professional wardrobe that was used also personally.

The effect of disallowing \$7,500 of the amount claimed was to allow \$3,292.15 as deductible. Even this initial allowance goes beyond the proof submitted on the hearing, under the rule that the only clothing expense allowable here would be that for costume or wardrobe used by the taxpayer in a role as an actress.

As to the amount claimed for expenditures for dramatic coaching, the pertinent facts are these: The taxpayer, eighteen (18) years of age at the time in 1957, was employed as an actress in motion pictures and on the legitimate stage as well as in television. She earned the amount of \$75,000 from a motion picture made in California and \$28,662 from a play produced in New York to a total of \$103,662. She claimed at the hearings that she paid to her mother, Paula, the amount of \$20,400 for her services rendered as an on-the-set coach in connection with her performances in these roles. Her return, claiming such expenditure of \$20,400 for dramatic coaching did not affirmatively state to whom the money was paid. She did file an undated Federal informational return for 1957 reporting payment to her mother, Paula, of \$20,400 in that year. She took this amount for dramatic coaching expense in her Federal return and it was not challenged. In her California return she charged \$14,420 as expended for such dramatic coaching and tutoring fees, evidently in connection with the motion picture made there.

Both Paula Strasberg and the taxpayer's father, Leo Strasberg, are qualified dramatic coaches and the latter was prominently associated with the Actor's Studio in New York, New York. The taxpayer showed checks transferring a total of \$14,000 in no regular sequence and in various large amounts to

her mother, and similarly an aggregate of \$6,000 to her father. It was claimed, however, that the entire amount transferred to the parents was in consideration of coaching fees rendered by the mother, Paula, "on the set." This would seem to reflect the understanding that the taxpayer's representative had of the supposed rule that only "on the set" coaching was a deductible expense. Consequently, it is possible that the amounts given to both parents were ascribed entirely to the mother for "on the set" coaching. In any case, however, it is true that Paula Strasberg, did render coaching service and that \$20,000 was transferred to the parents. The amount allowed has been restricted to \$20,000 because the affidavit of Paula Strasberg, Tax Exhibit #1, which was submitted in support of the asserted transfer of \$20,000 to her indicates on a close reading that not all of that amount which was her total income in 1957 was received from Susan Strasberg. Also, the taxpayer's representative at the hearing, when called upon to testify, was in some haste to volunteer and get on the record that Paula Strasberg received some of her income from other sources. (Minutes Page 12) The evidence supports a conclusion that not more than \$20,000 was transferred to her parents by the taxpayer. The question is rather whether even that amount should be regarded as "ordinary and necessary" rather than excessive.

It may be noted that the taxpayer who was only eighteen, was evidently treated by her parents as an emancipated minor since she apparently made contracts in her own name and it was not asserted that her earnings belonged to her parents. 67 Corpus Juris Secundum, Parent and Child, Section 35, states: "A parent may relinquish his right to the services and earnings of his child It is not necessary that such relinquishment should be express; it may be implied from the circumstances." In considering, however, whether the amount paid was "ordinary and necessary" or whether it was excessive, the rights of her parents to the total earnings which might have been ascertainable and need not have been relinquished would seem to be a factor to be considered. Further, it is safe to say that the taxpayer's parents were helpful to her professionally in launching her career as an actress.

Under Tax Law Section 160 which allows deductions for ordinary and necessary expense in carrying on any "business" Regulation 20 NYCRR 253.10 under the heading Expense for Education, provides in part as follows:

"(a) Expenditures made by the taxpayer for his education are deductible, as business expenses or expenses incurred in the production or collection of income, if they are for education (including research activities) undertaken primarily for the purpose of:

(1) maintaining or improving skills required by the taxpayer in his employment or other trade or business one."

This regulation although not promulgated until 1959 was meant to be definitive and explanatory of Article 16 and Section 360 thereof, and consequently, it would be applicable to a 1957 return. (Letter to Helen Krassner, May 11, 1960, S.E.) As may be seen the regulation does not limit expenditures for dramatic coaching to that given on the set. Although expenditures for tuition paid to schools may be primarily contemplated by the regulation, it does not exclude personal coaching or tutoring fees. Such personal services are no doubt also covered under the regulation 20 NYCRR 253.6 "Compensation for Personal Service." This regulation provides in part as to reasonableness that it is "in general" just to assume that reasonable and true compensation is only such amount as would ordinarily be paid for like services by like enterprises in like circumstances and that the circumstances to be taken into consideration are those existing at the date when the contract for services was made, (rather than those existing at the date when the contract is questioned). (20 NYCRR 253.6(c))

The record establishes that \$20,000 was indeed transferred to the parents; that both of them were qualified dramatic coaches; and that the mother, Paula, if not both parents, did render such services. Consequently, the determination concludes that, in these circumstances, the asserted expenditure for dramatic coaching is allowable and should be allowed in the amount of \$20,000.

For the reasons stated above, I recommend that the determination of the State Tax Commission in this matter be substantially in the form submitted herewith.

/s/

FRANCIS X. BOYLAN

Hearing Officer

2/16/65

/s/

M. SCHAPIRO

APPROVED

/s/

E. H. BEST

APPROVED

FXB:pad

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF
SUSAN STRASSBERG
FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 14 OF
THE TAX LAW FOR THE YEAR 1957

The State Tax Commission having assessed additional normal income tax on the income of the taxpayer under Article 14 of Tax Law for the year ended 1957 and said taxpayer having filed an application for revision or refund related to such additional assessment and such application having been denied; and a hearing having been held on May 12, 1964, at the office of the New York State Department of Taxation and Finance, 80 Centre Street, New York, New York, before Francis E. Boylan, hearing officer; and Robert E. Marcus, CPA, of New York, New York, having been present on behalf of the taxpayer, and the record having been duly examined and considered,

The State Tax Commission hereby finds that:

(1) On the taxpayer's return for the year under consideration, 1957, the State Tax Commission by Notice of Additional Assessment No. B-752580, dated March 3, 1960, disallowed \$7,500 of the amount of \$10,792.15 claimed by taxpayer as an allowable deduction for wardrobe costumes and special attire, determining such portion not to be a necessary and ordinary expense incident to the production of the income reported. It further disallowed a claimed deduction of \$20,000 asserted to have been expended for dramatic tutoring and coaching fees on the ground that this

expenditure also was not an ordinary and necessary expense. Additional normal tax was assessed on the aggregate amount of \$28,000 disallowed in the amount of \$1,967. Thereafter, an allowance of \$5,000 was made on July 7, 1960, on account of the claimed expenditure for dramatic coaching and tutoring fees, the additional tax assessed being thereby reduced to the amount of \$1,617. Taxpayer filed an application for revision or refund related to such additional assessment as modified and such application was denied.

(2) At the time of the Return in 1957, the taxpayer was about eighteen (18) years of age; but was, as it is found, an emancipated minor. She was employed as an actress in motion pictures and on the legitimate stage and she reported earnings in the amount of \$75,000 from a motion picture made in California, and in the amount of \$28,442 from a play produced in New York, New York, the aggregate of such earnings being the amount of \$103,442.

(3) The taxpayer in the year 1957 expended the amount of \$14,394.34 for purchases of clothing and accessories and she claimed a deduction of 75 per cent of this amount, the sum of \$10,792.15, as an ordinary and necessary expense in her profession as an actress.

(4) No satisfactory showing was made by the taxpayer to substantiate that expenditures for clothing in excess of the amount of \$1,892.15 allowed as deductible were made by her for the purpose of acquiring professional costumes used in any role played by her as an actress, it is found.

(5) Taxpayer's mother, Paula Strassberg, and her father,

Lee Strasberg, were both qualified professional dramatic coaches. The taxpayer's mother rendered services to her as a dramatic coach in the year under consideration. The taxpayer transferred \$14,000 by checks to her mother and \$6,000 by checks to her father, all of which amounts were stated by the taxpayer to constitute consideration for the dramatic coaching services rendered by her mother. No satisfactory showing was made, it is found, that an amount in excess of \$20,000 was transferred to the taxpayer's parents by her in the year under consideration.

Upon the foregoing findings and all the evidence presented herein, the State Tax Commission hereby

DETERMINES:

(A) That the amount of \$7,500, out of claimed deductible expenditures by the taxpayer for clothing and accessories in the amount of \$10,792.15 out of a total expenditure in the amount of \$14,389.54 in the year under consideration, 1957, was properly disallowed as not constituting an ordinary and necessary expenditure in the production of taxpayer's income as an actress, there having been no adequate showing by the taxpayer that this portion, or any part of the said total expenditure, was for the purpose of furnishing professional wardrobe for the taxpayer's use in any of her roles as an actress.

(B) That the amount of \$20,000 transferred by the taxpayer to her parents, both qualified dramatic coaches, assertedly in consideration of coaching services rendered to the taxpayer by her mother was not excessive in the circumstances here, and was an allowable expenditure pursuant to provision of Tax law, Section

340, allowing ordinary and necessary expenditures for the production of reportable income, in accordance with pertinent regulations 20 NYCRR 253.4 allowing deductions for personal services and 20 NYCRR 253.10 which provides that expenditures for education are so deductible if undertaken primarily for the purpose of maintaining or improving skills required by the taxpayer in her "business" or profession; and accordingly the disallowance of the claimed amount of \$20,000 is modified to disallow only \$400, as to which there was no adequate proof.

(6) The additional assessment made by Notice of Additional Assessment B-752580, March 3, 1960, for the year 1957 is modified and the taxes imposed thereby are restated as follows:

Of the amount claimed for wardrobe, costumes and special attire, \$7,500 is disallowed as being in excess of an amount which is considered ordinary and necessary in connection with the income reported.

Deduction of \$20,000 for dramatic coaching and tutoring fees, allowed to the extent of \$20,000, is disallowed to the extent of \$400 as unsubstantiated.

Total amount disallowed, \$8,100.

Additional normal tax due on \$8,100 at 7 per cent....\$567.00.

It is so ordered.

Dated: Albany, New York, this 19th day of November 1960.

STATE TAX COMMISSION

JOSEPH H. MURPHY

/s/

President

IRA J. PALESTIN

/s/

Commissioner

JAMES R. MACDUFF

/s/

Commissioner