



## Tax Reduction Letter

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### ***Owen v. Commissioner***

23 T.C. 377 (T.C. 1954)

Respondent determined a deficiency in petitioner's income tax for the calendar year 1947 in the amount of \$451.42. The issue is whether or not petitioner was carrying on a trade or business to which the expenses of maintaining an office were attributable.

#### **FINDINGS OF FACT.**

Petitioner filed an individual income tax return for the year 1947 with the then collector of internal revenue for the district of North Dakota.

From May 1, 1944, until January 1954, petitioner was employed by the Department of Justice, United States Government, as a special assistant to the Attorney General, pursuant to section 312, Title 5, of the United States Code. During this period, he lived with his wife in rented quarters in Washington, D. C. During 1947, his legal services were performed exclusively for the Department of Justice.

Prior to his employment by the Government, petitioner had been actively engaged in the practice of law in Grand Forks, North Dakota. He had been admitted to the bar of that State in 1916 and subsequently he maintained a law office at all times at No. 1 Vold Block in Grand Forks. At some time prior to 1944, petitioner served as States Attorney of Grand Forks County and as City Attorney of Grand Forks. The files and records of these offices were and are maintained there in petitioner's office.

Immediately prior to his acceptance of a position with the Department of Justice, petitioner was engaged in the practice of law as an individual. He employed his two sisters, Winifred H. and Ruth J. Owen, to work in his office. Winifred was a stenographer and a law school graduate but she had not been admitted to practice law. Ruth was a typist and receptionist.

When petitioner accepted employment as a special assistant to the Attorney General in 1944, he anticipated that he would return to his office at the end of World War II. At the end of 1946, however, he received other assignments from his superiors in the Department of Justice and he remained in the employ of the Government. Each time a new Attorney General was appointed, petitioner thought that he would be dismissed from his position and that he would return to his office in Grand Forks. In the fall of 1953 petitioner submitted his resignation and early in 1954 he resumed his practice of law in Grand Forks.

During the period of his Government employment, petitioner maintained his law office with files and library in Grand Forks. During 1947, petitioner expended the following amounts for the purposes indicated which he claimed as "Other Business Deductions" in Schedule C, PROFIT

(OR LOSS) FROM BUSINESS OR PROFESSION, in his individual income tax return filed for that year:

Office rent	\$ 420.00
Telephone	80.64
Lights	12.24
Janitor service	30.00
Post office box	6.00
Stationery	40.00
Typewriter repairs and supplies	22.00
Bar board license	10.00
Miscellaneous office expenses	35.00
Winifred H. Owen, extra work	480.00
Ruth J. Owen, office work	480.00
	\$ 1,615.88

Petitioner performed no legal services in the office at Grand Forks, nor did he render any legal services for which he received pay, other than to the Department of Justice, during 1947. His only income for that year was received from the United States Government in payment for his services rendered to the Department of Justice.

On his tax return for 1947 petitioner claimed a standard deduction of \$500 from adjusted gross income in lieu of itemized deductions. He also claimed thereon a loss from business or profession in the amount of \$1,615.88 in computing the amount of his adjusted gross income.

During 1947, petitioner was not carrying on any trade or business to which the above listed office expenses were attributable.

## **OPINION.**

FISHER, Judge:

Petitioner expended \$1,615.88 during 1947 to maintain a law office in Grand Forks, North Dakota. He elected in his return for that year to take the standard deduction provided in section 23 (aa) of the 1939 Code, which election was irrevocably binding upon him. The standard deduction is in lieu of "all deductions other than those which under section 22 (n) are to be subtracted from gross income in computing adjusted gross income." Section 23 (aa) (2) of the 1939 Code. Petitioner contends that the office expenses constitute deductions allowed by section 23 which are attributable to a trade or business carried on by him during 1947 and that they are therefore deductible under section 22 (n) (1) of the 1939 Code in addition to the standard deduction. Respondent, on the other hand, has determined that petitioner was not engaged in the carrying on of any trade or business in Grand Forks, North Dakota, during 1947, and that the claimed deductions are not allowable. We must therefore decide whether or not petitioner was carrying on a trade or business to which the claimed deductions were attributable in 1947.

Engaging in the practice of a profession is carrying on a trade or business within the meaning of section 23 (a) (1) (A) of the 1939 Code. See Regs. 111, sec. 29.23(a)(5). Petitioner accordingly

argues 380\*380 that he was carrying on his law practice in North Dakota during 1947. We disagree for the reasons indicated below.

A brief résumé of the pertinent facts will aid our discussion. After many years of practice in Grand Forks, North Dakota, petitioner left there in 1944 and moved with his wife to Washington, D. C., upon his acceptance of a position with the Department of Justice. Thereafter until 1954 he maintained a residence with his wife in Washington, D. C. There is no evidence that he was at any time during 1947 physically present anywhere in the State of North Dakota or particularly in his office in Grand Forks. In any case, he admittedly performed no legal services in the office during that year, and his Government position kept him over a thousand miles away.

Also during 1947 he rendered his full-time legal services to the Department of Justice, and his only income that year was from the United States Government in payment for those services. He received no income that year from the practice of law in Grand Forks, or from any other source.

The main connecting factor between petitioner and his alleged law practice in Grand Forks was his maintenance of an office there during the year in question. His name and occupation were printed on the doors and windows, and the public and private files which he had accumulated over the years were kept there available for scrutiny by properly authorized persons.

At the time he accepted the position as a special assistant to the Attorney General, petitioner felt that he would return to Grand Forks upon his dismissal or resignation from Government service, probably at the end of the World War II which was then in progress. By 1947, however, he had been in Washington over 2½ years and he continued thereafter to remain away from Grand Forks until 1954. When asked at the hearing of the instant case why he maintained the office and paid the expenses on it in 1947, petitioner testified as follows:

Because the office had been in continuous operation and I contemplated coming back any time. I had what they called a temporary appointment and I expected to be back here at any time and I wanted to keep my contacts.

We have given full consideration to all of the facts in the instant case and it is our conclusion that petitioner was not carrying on a law practice in Grand Forks during 1947. We believe that there is a distinction which must be drawn between practicing law and maintaining an office available for the practice of law. Petitioner did only the latter. He performed no legal services there during 1947, and there is no evidence in the record to indicate that he had either time or opportunity to do so in that year. Petitioner's statement quoted above clearly indicates that his only purpose in maintaining the office was to have it ready for him to use immediately upon his return. Keeping 381\*381 an office in readiness for use is not equivalent to actually using it for the practice of law.

In a limited sense, the instant case is analagous to those involving expenses incurred in preparation for engaging in a trade or business. We have held frequently that such expenses are not deductible as trade or business expenses within section 23 (a) (1) (A). See Morton Frank, 20 T. C. 511. In the instant case, petitioner in effect incurred expenses in preparation for the resumption of his trade or business; that is, his return to the practice of law in Grand Forks at some indefinite future date. Accordingly, we believe that the rule expressed in the cited case is here applicable.

Although there is no direct evidence in the record in this respect, petitioner probably derived some benefit from his expenditures incurred to keep his office open during the years of his absence. His name on the office windows and doors served to keep his name before the public to some extent. Moreover, the existence of his law office was notice to the community that he intended to resume his practice at some future date. Perhaps we could best characterize the benefit received by petitioner from the office during 1947 as the perpetuation of his goodwill. We believe that this is what petitioner had in mind when he testified, "I wanted to keep my contacts." The petitioner was, thus, attempting to maintain an asset from which his future income would be derived. He was not so much interested in current gain from his office as he was in maintaining it as a foundation for the future. These activities do not constitute carrying on a trade or business. See James M. Osborn, 3 T. C. 603; Frederick A. Purdy, 12 T. C. 888.

Since we have found that the office expenses are not attributable to a trade or business carried on by petitioner in 1947 and are therefore not deductible, we need not consider the question of whether or not some of the expenses were ordinary and necessary within the meaning of section 23 (a) (1) (A) of the 1939 Code.

For the sake of completeness, we mention that one of the office expenses claimed by petitioner was \$10 for "Bar Board license," the annual license fee required to practice law in the State of North Dakota. Assuming that petitioner's employment by the Department of Justice was a trade or business and that the fee was ordinary and necessary to petitioner's continued engagement in that trade or business, it is not deductible under section 22 (n) (1) in addition to the standard deduction. Such a trade or business consists of the "performance of services by the taxpayer as an employee" which is a disqualifying condition contained in section 22 (n) (1). J. Rene Harris, 22 T. C. 1118; Chester C. Hand, Sr., 16 T. C. 1410, 1414-1415. Since petitioner elected to claim the standard deduction, the license fee, if at all deductible, is included therein.

Decision will be entered for the respondent.