

Greisdorf v Commr

54 TC 1684

Hoyt, Judge:

The respondent determined a deficiency in the petitioners' income tax for the calendar year 1967 in the amount of \$310.25. The case presents the issue of whether the petitioners are entitled to deduct as a medical expense under section 213 of the 1954 Code, the amount of \$1,410.23 which they paid in 1967 to send the petitioner-wife's daughter to the Mills School in Fort Lauderdale, Fla.

Findings of Fact

The stipulation of facts and the exhibits attached thereto are incorporated herein by this reference.

The petitioners, Lawrence D. Greisdorf and Marianne C. A. Greisdorf, were husband and wife during the year in issue. They filed their joint income tax return for the year 1967 with the director of the Southeast Service Center of the Internal Revenue Service, located at Chamblee, Ga. At the time the petition herein was filed, they resided in Hollywood, Fla.

Elizabeth Angell is Marianne's daughter by a former marriage. She was born in 1953. Elizabeth's natural father, a psychiatrist, was an emotionally troubled man who tended to reject his children and discipline them severely, occasionally by assaulting them physically. Instead of giving them backing and support, he demanded it from them. Elizabeth innocently suffered from the traumatic conditions in her home during the period of her father's instability. She manifested various symptoms of emotional disturbance and began to have difficulty in school.

Elizabeth started public school when she was 6 years old. She was withdrawn from school during the first grade because of poor adjustment. The next year she was placed in the first grade in the Little Flower Catholic School in Hollywood, Fla., where she remained through the fifth grade.

Marianne obtained a divorce in 1961, and she married Lawrence in 1962. In 1963, when Elizabeth was approximately 9 years old, her natural father committed suicide.

The divorce of her parents and the subsequent death of her father had a profound psychological effect on Elizabeth. She felt somehow responsible for her father's death. She also felt rejected and developed symptoms of extreme anxiety. At school she would refuse to do any [pg. 1686]academic work and would sit and stare into space. She would regularly have temper tantrums and vomit. Elizabeth became increasingly more withdrawn from reality. She lost interest in her personal relationships and engaged in few of the activities that would be normal for a girl of her age.

Elizabeth had very little confidence in herself and did not believe she was very intelligent. In truth, testing indicated that her intellectual capabilities were better than average. Despite this fact, she had a poor attention span at school and daydreamed excessively. Seldom, if ever, did she experience scholastic success.

The Greisdorfs are intelligent people and were fully aware of the scope of Elizabeth's problem. Marianne is a graduate nurse and has had professional experience working with children with emotional problems. Although the petitioners were not rich, they attempted to provide the child the assistance and support she required. In 1964, they enrolled her in summer school for corrective help in arithmetic and English. The results of this special instruction were not totally satisfactory. In the early spring of 1965, the petitioners took Elizabeth to a psychiatrist for therapy. At that time she was unable to function because of severe emotional outbursts. The psychiatrist, after 12 psychotherapeutic sessions, diagnosed Elizabeth as having a "Pre-adolescent Adjustment Reaction" 1 and "recommended that she attend a school such as the Mills School for further treatment."

Despite the fact that the petitioners found it financially burdensome to do so, they followed the doctor's advice and enrolled Elizabeth in the Mills School at Fort Lauderdale, Fla., on August 31, 1965, to continue her treatment. Elizabeth also attended the school during the 1966-67 school year, returning to the Greisdorf home at the end of each day.

The Mills School was established in 1958 by Robert E. Mills to provide an environment where average and above-average students with special learning disabilities (usually psychological) could learn to adjust and function normally in a competitive classroom situation. Mills earned his doctorate in the field of education, and he and each member of his teaching staff had special training in psychology. They kept abreast of current developments in clinical training workshops, which Mills sponsored and met twice a week to diagnose and make recommendations. In addition, there were psychologists on the staff, and two psychiatrists served the school as consultants.[pg. 1687]

Although the Mills School was accredited by the Florida Department of Education, it maintained a highly flexible academic program in order to accommodate the degree of stress that a given child could withstand. Classes were kept very small (limited to six students) to foster a close teacher-student relationship. The school accepted only students with learning difficulties, generally of an emotional nature, and its primary service was to assist its charges in becoming more effective students and better adjusted individuals by providing a total therapeutic milieu. It was the only school of its kind in the Fort Lauderdale area.

Upon entering the school, Elizabeth's intellectual ability was extensively tested, and she was subjected to a psychological and psychometric evaluation. The staff determined the scope of her emotional problems in order to develop an educational program suited to her specific needs. Her paramount need was to develop a more positive and confident regard of herself which the staff concluded could be accomplished most easily in a clinical educational setting.

During her first few months at the Mills School, Elizabeth spent an hour each day either receiving therapy from Mills or participating in group therapy with other children.

All staff members at the school were knowledgeable about Elizabeth's maladjustment, and they consulted with each other frequently to develop a consistent approach for dealing with her difficulties.

The educational program that was established for Elizabeth was individualized to bolster her emotional development and was designed to enhance the therapy she was receiving. She was placed in a class with children with similar problems. The class was essentially ungraded to permit each student to progress at his or her own rate in each subject.

Although Elizabeth was supposed to be in the fifth grade, she was assigned fourth-grade reading and low fourth-grade mathematics. She had manifested some difficulty in each of these areas, and the staff felt that it was essential that she be able to realize success and build up her self-

confidence. Because Elizabeth was an active girl, a considerable amount of her time was spent in recreational activity. The scholastic program which she followed at the school was directed towards her psychological needs and was developed primarily to bring about an improvement in her emotional state.

Subsequent to the year in issue, Elizabeth progressed to the point where she could be withdrawn from the Mills School. She presently attends school in the public school system of Broward County, Fla.

On their income tax return for the calendar year 1967, the petitioners deducted \$1,910.23 paid during that year as expenses incurred at the Mills School for Elizabeth. Of this total amount, \$500 was directly [pg. 1688] attributable to the therapy provided by Mills, \$1,200 was attributable to tuition, and \$210.23 was attributable to miscellaneous expenses of an unspecified nature incurred at the Mills School. In his statutory notice of deficiency, dated June 27, 1969, the respondent allowed as a deduction the \$500 attributable to Mills' therapy and disallowed the remaining \$1,410.23. This latter amount was not regarded as an allowable medical expense under section 213 of the 1954 Code.

OPINION

The petitioners claim that the total amounts paid by them in 1967 to the Mills School on behalf of Elizabeth, the petitioner-wife's daughter, are deductible medical expenses under section 213 of the 1954 Code. 2

Section 213 provides for a deduction of expenses paid during the taxable year for the medical care of a taxpayer's dependent suffering from a disease. Expenditures made to treat emotional difficulties, such as those experienced by Elizabeth, may qualify under this section as expenses paid for medical care. Paul H. Ripple, 54 T.C. 1442 (1970); C. Fink Fischer, 50 T.C. 164 (1968); Hobart J. Hendrick, 35 T.C. 1223 (1961).

In determining whether the petitioners' payments to the Mills School for Elizabeth's benefit qualify as medical deductions, we have carefully considered section 1.213-1 of the Income Tax Regulations. These regulations contain the following provision:

While ordinary education is not medical care, the cost of medical care includes the cost of attending a special school for a mentally or physically handicapped individual, if his condition is such that the resources of the institution for alleviating such mental or physical handicap are a principal reason for his presence there. In such a case, the cost of attending such a special school will include the cost of meals and lodging, if supplied, and the cost of ordinary education [pg. 1689] furnished which is incidental to the special services furnished by the school. Thus, the cost of medical care includes the cost of attending a special school designed to compensate for or overcome a physical handicap, in order to qualify the individual for future normal education or for normal living, such as a school for the teaching of braille or lip reading. *** [Sec. 1.213-1(e)(1)(v)(a), Income Tax Regs.]

In the present case, the Mills School will be regarded as a "special school," within the meaning of the regulations, if its resources for alleviating Elizabeth's mental handicap were a principal reason for her presence there and if its educational program was only incidental to its medical care function. Paul H. Ripple, *supra*; C. Fink Fischer, *supra*. See also Arnold P. Grunwald, 51 T.C. 108 (1968).

As should be apparent from our findings of fact, we believe that the Mills School adequately meets the criteria of a "special school." Its founder established the school to provide an environment where children with emotionally caused learning disabilities could learn to adapt

effectively to a classroom situation. The objective of the Mills School was to produce more effective students and better adjusted individuals.

All members of the staff, including those who were not psychologists, had formal training in psychology and regularly kept abreast of current developments in training workshops at the school. Two psychiatrists were employed in a consultant capacity. The staff members, teachers and psychologists, met regularly to develop consistent approaches for dealing with the specific problems of the students.

As can be seen from Elizabeth's experience, the school provided an educational program that was highly individualized, permitting each child to progress at a rate suited to his special abilities and needs. Each student's course of study was devised to be supportive of the therapy which he received and to instill in him the necessary confidence to permit him to overcome his emotional and educational deficiencies. The scholastic program at the school was designed primarily to enhance a given child's psychological development and was used as a means to that end. The educational aspects of the Mills School were merely incidental to the school's principal goal of eliminating or reducing the learning disabilities of its students.

Elizabeth attended the Mills School at the recommendation of the psychiatrist who had been giving her therapy. He felt that her attendance at the school was important for the treatment of her emotional problems. Although it was difficult for them from a financial standpoint, the petitioners enrolled Elizabeth upon his recommendation in the expectation that Elizabeth would be helped to overcome her [pg. 1690]emotional difficulties and resultant learning handicap. When progress was made in this regard, Elizabeth withdrew from the school and began attending public school. It seems clear from the record that the special resources available at the Mills School for alleviating Elizabeth's mental handicap were the principal reason for her enrollment there.

The regulations referred to earlier in our discussion list "a school for the teaching of braille or lip reading" as an example of an institution "designed to compensate for or overcome a physical handicap, in order to qualify the individual for future normal education or normal living." (Emphasis added.) We believe that the Mills School, with its emphasis on a child's emotional handicap, is equivalent in scope and purpose to a school for braille or lip reading, and we regard it as falling within the purview of the above-quoted regulatory provision.

The case is distinguishable from the Ripple, Grunwald, and Fischer cases, *supra*, wherein we held, on the facts then before us, that the school in question did not qualify as a "special school" under the applicable regulations.

In those cases, although certain therapeutic benefits were derived by handicapped students from the services provided by the schools, the evidence showed the essential service of each school to be educational in nature. In the present case, while educational benefits may have been incidentally obtained by Mills students, their attendance at the school was prompted by their mental handicaps and had principally a therapeutic value.

Even if we were to assume that this were not the case for most Mills School students, which assumption would be contrary to the record, there can be no doubt that the school performed a therapeutic function as far as Elizabeth was concerned. She was sent to the institution to further her treatment, and the program that was developed for her there was carefully designed to provide the necessary services to eliminate the emotional barriers to her future normal scholastic success. In *C. Fink Fischer, supra*, we stated (at page 174):

The cases, the rulings, and the regulations make clear that whether a service for which an expenditure is made constitutes medical care will depend upon its therapeutic nature to the

individual, and not upon the title of the person rendering the service,⁵ or whether the expense is "medical" to all persons,⁶ or the general nature of the institution in which the service is rendered.⁷ [Footnotes omitted.]

Elizabeth suffered from a mental handicap which if untreated would no doubt have become "fixated" and even more disabling and which prevented her from pursuing normal education and normal living. The resources of the Mills School for alleviating Elizabeth's mental [pg. 1691]instability were the principal reason for her attendance there and after the successful application of those resources, resulting in the hoped-for improvement in her mental condition, she was withdrawn from the school and attended the local public schools. This is precisely the type of situation covered by the provisions of section 1.213-1, Income Tax Regs. We decide this issue in favor of petitioners and conclude that the \$1,200 expended for Elizabeth's tuition in 1967 was paid for the mitigation and treatment of her disease.

The petitioners also deducted on their 1967 return expenses of \$210.23 which were incurred at the Mills School. They have offered no evidence in connection with these miscellaneous expenditures and have therefore failed to meet the burden of establishing their deductibility. Rule 32 of the Rules of Practice of this Court; *Welch v. Helvering*, 290 U.S. 111 (1933). We uphold the respondent's determination in this respect.

Decision will be entered under Rule 50.

1 "Adjustment Reaction of Adolescence" is a generally accepted diagnosis of a type of mental disorder which stems from an acute reaction to overwhelming environmental stress. If untreated, this category of illness can become fixated and more permanently debilitating.

2 Sec. 213 of the 1954 Code was amended by Pub. L. 89-97, effective for taxable years beginning after Dec. 31, 1966, to read in part as follows:

(a) Allowance of Deduction.-There shall be allowed as a deduction the following amounts, not compensated for by insurance or otherwise-

(1) the amount by which the amount of the expenses paid during the taxable year *** for medical care of the taxpayer, his spouse, and dependents (as defined in section 152) exceeds 3 percent of the adjusted gross income, ***

(e) Definitions.-For purposes of this section-

(1) The term "medical care" means amounts paid-

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A), ***

No substantive change was made by Pub. L. 89-97 to sec. 213 which would affect the issue presently before us. See H. Rept. No. 213, 89th Cong., 1st Sess. (1965), 1965-2 C.B. 744-745.