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Taxation--Disbursements to Frustrate State and Municipal Laws--Deductions as Business Expenses Not Allowed

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always be exercised sparingly, and with the utmost caution. All doubts should be resolved against its exercise."

In view of the legal history of aesthetics, the almost unanimous reluctance of the courts to recognize it as a valid consideration, and the possible consequences incident to this court's decision, it is hoped that courts in the future will exercise the utmost diligence and judgment in deciding whether or not to grant injunctive relief based on aesthetic grounds.

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TAXATION—DISBURSEMENTS TO FRUSTRATE STATE AND MUNICIPAL LAWS—DEDUCTIONS AS BUSINESS EXPENSES NOT ALLOWED.—*P* owned and operated slot machines within the city of Wheeling in violation of W. VA. CODE c. 61, art. 10, § 1 (Michie 1949), and of § 32 of Ordinance 38 of the city of Wheeling. By agreement between *P* and city authorities *P* was permitted to operate the slot machines illegally. Periodically, after checks by the city police department as to the number of machines operated, fines of $100.00 and costs were imposed by the judge of the police court upon the operation of each machine in the name of the proprietor of the establishment where the machines were located. These fines were paid by *P*. *P* deducted these fines from his taxable income as ordinary and necessary business expenses under Int. Rev. Code of 1939, § 23 (a) (1), 53 STAT. 12 (now INT. REV. CODE OF 1954, § 162). The Tax Court did not allow this deduction. Upon petition to the United States Court of Appeals for the 4th Circuit, *held,* that the money used in payment of fines, although a part of *P*'s income, was not deductible under the Internal Revenue Code, because it was incurred in violation of a state statute and a city ordinance; any such tax deduction would contravene the laws of the state. A second issue, not discussed in this comment, concerned the amount of depreciation allowable on *P*'s machines and was decided against *P* for insufficient evidence. Judgment affirmed. *Automatic Cigarette Sales Corp v. Commissioner,* 234 F.2d 825 (4th Cir. 1956).

The decision in the case expresses the majority view. *Lilly v. Commissioner,* 343 U.S. 90 (1952); *Commissioner v. Heininger,* 320 U.S. 467 (1943); *Commissioner v. Doyle,* 231 F.2d 635 (7th Cir. 1956); *Commissioner v. Longhorn Portland Cement Co.,* 148 F.2d 276 (5th Cir. 1945); *Clark v. Commissioner,* 19 T.C. 48 (1952); *Davenshire v. Commissioner,* 12 T.C. 958 (1949). These cases

and many others establish the law that fines are not deductible when the violation for which the fine was imposed was intentional or negligent. *National Brass Works v. Commissioner,* 205 F.2d 104 (9th Cir. 1953); *Burroughs Bldg. Material Co. v. Commissioner,* 47 F.2d 178 (2d Cir. 1931); Rev. Rul. 4042, 1951-1 CUM. BULL. 15. Likewise, bribes are not deductible. *Maddas v. Commissioner,* 40 B.T.A. 572 (1939).

The payments to the city by the petitioner in the principal case cannot strictly be called fines for violation of the law, because "the arrangements to have the payments appear upon official records as fines, or forfeited bail, was patently a sham." *Clark v. Commissioner,* 19 T.C. 48, 50 (1952). The question raised is as to the nature of the payments by the petitioner. Van Fossan, Judge, in *Clark v. Commissioner,* 19 T.C. 48, 51 (1952), labels such payments variously as: "sham proceedings", "fictitious prosecution", "unauthorized fee", "arrangement of convenience", "protection payments." The facts in that case were almost identical to those in the principal case except as to the amount of the payments. The accurate legal term for this type of "arrangement" evades precise definition. Does it fit the definition of bribery? "Bribery is receiving or offer of undue reward by or to one whose ordinary profession or business relates to administration of public justice, to influence behavior in office." *State v. Harrah,* 101 W. Va. 300, 302, 132 S.E. 654, 655 (1926). The facts seem to fit the elements of the crime of bribery. However, "a municipal corporation is incapable of committing any offense of a purely criminal nature which has in it the element of evil intent, malice, or wilful violation of the law's command." *State v. Metropolitan Park Dist.,* 100 Wash. 449, 171 Pac. 254 (1918), 4 DILLON, MUNICIPAL CORPORATIONS, § 1598 (1911). Therefore, the city cannot be guilty of bribery. It would seem to follow then that since the city as a municipal corporation, cannot be guilty of accepting a bribe, the petitioner cannot be guilty of bribing the city. In order to constitute the crime of bribery, something of value must be offered or given to one who is a proper subject of a bribe. *United States v. Kemler,* 44 F. Supp. 649 (D.C. Mass. 1942); *State v. King,* 103 W. Va. 662, 138 S.E. 330 (1927). The fact is certain that the "agreement" was against public policy and that condoning it would frustrate the laws of the commonwealth; but to this writer's knowledge there is no distinct term in criminal law which will accurately or fully describe the nature of the particular arrangement.

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