

Creative Advertising Methods

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Robert Sieber of Cincinnati, Ohio, was a self-employed custom builder of homes and barns. Mr. Sieber enjoyed playing polo, and was captain of his polo club. His sons and daughter participated in the team, and his wife fixed lunches for the team and guests. The team won various championships and garnered local newspaper coverage.

He decided that playing polo was a way of promoting his services as a contractor because it enabled him to meet wealthy people who might require his services as a custom builder. The IRS denied his deductions, and he took his case to Tax Court, which sided with the IRS.

To withstand scrutiny in taking advertising deductions in such a situation it is necessary to show that the expenditures were undertaken primarily for a business, not a personal or social purpose, and that there was a proximate, rather than merely a remote or incidental, relationship between the expenditures and one's business. This becomes more difficult when the expenses are of a character which are normally personal.

The court held that Mr. Sieber played polo primarily because it gave him personal satisfaction, and helped him maintain a close relationship with his family. Mr. Sieber, himself, stated in a newspaper interview, that polo was a hobby that was good for his family. "Expenditures for such personal pursuits are not deductible," the court ruled.

Perhaps the main difficulty in this case was that he did nothing to make people attending the games aware of his services as a custom home builder. He did not even advertise his business in the polo club program.

In order for expenditures for activities usually considered recreational to constitute legitimate advertising expenses it is crucial to make extensive efforts to link the recreational activity with your business in the minds of potential customers, through trademarks, signs, displays, and various promotional schemes.

The court said that "at most," Mr. Sieber developed some friendships, and got some business which he would not otherwise have obtained. "However, without a showing of a more direct connection between a recreational activity and a taxpayer's business, expenditures for personal pursuits are not deductible business expenses merely because they afford contacts which lead to some business income. An incidental or remote benefit to petitioner's proprietorship does not provide the nexus essential to a determination that an expenditure is a deductible business expense."

The court also noted that his polo expenses were high in comparison to the income of his business. "It is doubtful, from a business standpoint, such expenditures would be justified." [Sieber v. Commissioner, 38 TCM 48, T.C. Memo. 1979-15.]

Another case involved Michael Shapiro, an accountant and former IRS agent in Los Angeles, California, who sought to take advertising deductions in connection with a quarter horse he owned and showed at various horse shows. He claimed the expenses of boarding, riding and showing his horse on the argument that the activity enabled him to meet “horse people” who might become future clients. He entered various amateur divisions and he spoke with many people he met at the events, informing them that he was a tax adviser.

He testified in Tax Court that he gained several clients from his involvement with horses. However, the court noted that he did not display any kind of advertisement which would associate him and his horse with his accounting practice. The court held that his expenses were not ordinary and necessary to the conduct of his business as a tax adviser.

The court recognized that clients often come from social contacts, and that the activities might well help broaden the taxpayer’s contacts, but that “were we to recognize that expenditures for normally personal pursuits become deductible business expenses simply because they afford contacts with possible future clients without showing a more direct relationship to the production of business income, it is evident that most all club dues and similar expenditures, for example, as well as the expense of appearing at the right place at the right time with the right people, could be claimed as ordinary and necessary business expense.”

The court said that Mr. Shapiro’s use of the horse may have had a positive effect on his business, but that there was not a sufficient showing of a causal nexus between the activity and the garnering of new clients. [Shapiro v. Commissioner, 67 TCM 2389, T.C. Memo. 1994-105.]

Thus, the general rule is that in order for social and sporting activities to be justified as advertising expenses there must be some direct benefits to one’s business rather than some remote or incidental connection. It is crucial to document the “proximate relationship” between the advertising method and the business obtained, in other words, to show that the advertising method resulted in new business to the taxpayer.

A well known case that upheld the use of sporting advertising expenses is *Rodgers Dairy Co. v. Commissioner*, 14 T.C. 66 (1950). The taxpayer owned a chain of restaurants in Pittsburgh. The company purchased two Russian wolf hounds and kept them in a kennel at the rear of the general offices, and claimed the costs as advertising deductions. The company also bought some show horses “for advertising purposes.”

The horses were exhibited in horse shows primarily in places remote from Pittsburgh rather than before local audiences who were familiar with the company’s restaurant chain. The company’s logo and blue and white color scheme were used in the decoration of the stables at horse shows. The corporate sponsorship of the horses was prominently indicated in programs that were distributed at the show. Ribbons won by the horses were displayed at the corporate offices. The company’s principal shareholders almost never rode the horses, which were shown by professional trainers. Some of the horses were

sold at substantial profits, and stud fees were collected as well.

The IRS argued that the purchase of the dogs and horses was primarily for the personal pleasure of the company's principal shareholder. The Tax Court held that the dogs and horses were acquired for advertising purposes, and that the costs involved were not large in relation to the company's business income, so that the deductions were allowed.