Volume 35 | Issue 4 Article 4

January 1958

Case Comments

Dicta Editorial Board

CASE COMMENTS

Constitutional Law—Citizenship—Expatriation by voting in a foreign political election

BY WILBUR SATO

Wilbur Sato received his A. B. degree from the University of California. He is a student at the University of Denver College of Law.

Petitioner, a national of the United States by birth, admitted voting voluntarily in a 1946 Mexican political election. He was declared to have lost his citizenship[1] by operation of § 401 (e) of the Nationality Act of 1940[2] which provides that a citizen shall lose his citizenship by voting in a foreign political election. Petitioner sought to have the judgment against him reversed on the ground that the enactment of this provision was beyond the power of Congress. On certiorari, the Supreme Court of the United States affirmed the judgment of the lower court in a five to four decision. The Court found an implied power in Congress to enact legislation for the effective regulation of foreign affairs and held that § 401 (e) was an appropriate means of exercising this power. The doctrine of voluntary expatriation as recognized by statute[3] was not considered relevant. Mr. Justice Whittaker conceded that Congress had acted within the scope of its powers, but dissented on other grounds. *Perez v. Brownell,* 78 Sup. Ct. 568 (1958).

The principle adopted in the *Perez* case was first announced in a 1915 denationalization case in *MacKenzie v. Hare.*[4] In that case a native born citizen was held to have lost her citizenship under a 1907 act[5] which provided that any American woman who marries a foreigner shall take the nationality of her husband. Mrs. MacKenzie, who was continuously domiciled in the United States, contended that Congress could not impose loss of citizenship for marriage to a foreigner. The Supreme Court held that Mrs. MacKenzie had lost her citizenship through voluntary expatriation, and announced by way of preliminary explanation that the United States had the powers of a sovereign nation, including those which concern its relations with other sovereigns.[6]

The only other nationalism case in which the doctrine of sovereign powers has been invoked is *Ex parte Griffin,*[7] which arose under a different provision of the 1907 act. This section imposed loss of citizenship for taking an oath of allegiance to another nation. The petitioner took an oath of allegiance to the King in joining the Canadian army. In upholding denial of re-entry on grounds that petitioner was an alien, the court declared that though there is no express grant of power to Congress in the Constitution to declare what acts on the part of citizens

---

1 235 F.2d 364 (1956).
2 54 Stat. 1137 (1940), 8 U.S.C. § 801(e) (1940).
3 Act of July 27, 1868, c. 249, § 1, 15 Stat. 223.
4 239 U.S. 299 (1915).
5 Act of March 7, 1907, c. 2534, 34 Stat. 1228.
6 239 U.S. at 311.
7 237 Fed. 445 (N.D. N.Y. 1916).

constitute abandonment and renunciation of citizenship, there is an implied power arising as a necessary concomitant of sovereignty.[8] The Court cited MacKenzie as authority for its declaration. The case of *Ex parte (Ng) Fung Sing*[9] should be mentioned here because in that case the court asserted that citizenship is a political status and privilege which Congress may define and limit. Other cases in which this constitutional issue has been touched upon are not persuasive.[10]

Prior to *Perez,* the doctrine of sovereign powers seems to have had its greatest vitality in other fields.[11] In the case of *United States v. Curtiss-Wright Export Corp,*[12] where the issue was whether a joint resolution of Congress met the standard for valid delegation of legislative authority to the executive, Mr. Justice Sutherland declared that the power of government in respect to foreign affairs is not limited by the Constitution. He reasoned that this power is vested in the government as a necessary concomitant of sovereignty.[13]

In only two pre-*Perez* cases involving loss of citizenship for voting in a foreign political election has the constitutional issue been seriously considered. Both cases arose in the federal district court for Hawaii. In *Okimura v. Acheson,*[14] the court declared § 401 (e) of the Nationality Act of 1940 to be unconstitutional on the ground that Congress did not have the power to take away citizenship.[15] Secretary of State Acheson appealed directly to the United States Supreme Court. That court vacated the judgment and remanded the case with directions to make findings as to whether the petitioner's conduct was voluntary.[16] On rehearing, the district court found the acts to be involuntary, and the petitioner was declared to be a citizen of the United States.[17] In the later case of *Terada v. Dulles,*[18] involving the same section of the act, the same district court held that Congress was without power to provide for automatic divestiture of citizenship. This ruling was not appealed.

In the case of *United States v. Wong Kim Ark*[19] the power of Congress to alter the status of citizenship was in question. The Court held that the Constitution has conferred on Congress no right to alter or restrict the effect of birth in the United States.[20] Also, by way of dictum, in *Osborn v. Bank of the United States*[21] the Court found that the Constitution does not authorize Congress to abridge those rights of citizenship defined and fixed by the fourteenth amendment of the Constitution.[22]

---

8 Id. at 453.
9 6 F.2d 670 (W.D. Wash. 1925).
10 Vidales v. Brownell, 217 F.2d 136 (9th Cir. 1954); Gonzales v. Landon, 215 F.2d 955 (9th Cir. 1954); Miranda v. Clark, 180 F.2d 257 (9th Cir. 1950).
11 Fong Yue Ting v. United States, 149 U.S. 698 (1893); United States v. Peace Information Center 97 F. Supp. 255 (D. D.C. 1951).
12 299 U.S. 304 (1936).
13 Id. at 318.
14 99 F. Supp. 587 (D. Hawaii 1951).
15 Id. at 589.
16 Acheson v. Okimura, 342 U.S. 899 (1952).
17 Okimura v. Acheson, 111 F. Supp. 303 (D. Hawaii 1953).
18 121 F. Supp. 6 (D. Hawaii 1954).
19 169 U.S. 649 (1898).
20 Id. at 703.
21 22 U.S. (9 Wheat.) 738 (1824).
22 Id. at 827.

Much stronger language was used in *Kansas v. Colorado*.[23] There the Court declared, in explicit repudiation of the doctrine of sovereign powers, that it clearly appears from the Constitution that our government is a government of enumerated powers.[24]

The irreconcilable conflict of cases in the area of expatriation had its inception in a series of cases arising in the district court for Hawaii.[25] The existence of the troublesome constitutional question was recognized, and that court elected to follow the cases which had rejected the doctrine of sovereign powers. The *Perez* decision repudiates that view, adopts the doctrine of sovereign powers, and expressly rejects the proposition that the fourteenth amendment restricts the operation of the foreign relations power. *Perkins v. Elg*,[26] cited by the Court as authority on this point, reaches the conclusion that citizenship is deemed to continue unless specifically revoked by terms of treaty or Congressional enactment.[27]

In view of the conclusions reached in *Trop v. Dulles*,[28] however, *Perez* is inconclusive authority for the proposition that deprivation of citizenship is within the scope of Congressional authority. The *Trop* case, decided in the same term but subsequent to *Perez*, arose under § 401 (g) of the 1940 Nationality Act. This provision provided for loss of citizenship for desertion from the armed forces during war. Trop was convicted by court martial for desertion during war. Mr. Chief Justice Warren, speaking for the Court in a five to four decision, reiterated the position taken by the minority in the *Perez* decision, to the effect that Congress was without power to enact statutory provisions for expatriation. An alternative ground, however, was stated in deference to the *Perez* decision. The Court declared that § 401 (g) was not within the War Power of Congress, and that the effect of the section was to impose cruel and unusual punishment within the Constitutional prohibition.

The crucial question of the scope of Constitutional limitations on the foreign relations power was decided by the *Perez* case. The Court was bold indeed in declaring that this power is not limited by the fourteenth amendment, for *Perez* viewed with *MacKenzie* indicates that there is no distinction between acts performed in the United States and acts performed abroad. It follows logically that any act that Congress may wish to specify which might tend to embarrass us in our relations with other nations or interfere with the effective conduct of foreign affairs may be deemed an expatriating act, even though the act be performed lawfully and in the exercise of rights protected by the Constitution. The application of the doctrine of sovereign powers to nationalization cases is a dangerous precedent. The alleged necessity of preventing embarrassment in the conduct of foreign affairs could well become the expedient of tyrants.

---

[23] 206 U.S. 46 (1907).
[24] Id. at 89.
[25] Sakamoto v. Dulles, 111 F. Supp. 308 (D. Hawaii 1953); Murata v. Acheson, 111 F. Supp. 306 (D Hawaii 1953) Okimura v. Acheson, 99 F. Supp. 587 (D. Hawaii 1951); Ouye v. Acheson, 91 F. Supp. 129 (D. Hawaii 1950).
[26] 307 U.S. 325 (1939).
[27] Id. at 329.
[28] 78 Sup. Ct. 590 (1958).

Income Taxation—Funded Corporate Buy-Sell Agreements—Corporation's Payment of Premium for Life Insurance On Stockholder as Dividend

ROBERT L. FRYE

Robert L. Frye received his Bachelor of Arts degree in Sociology from Princeton University, and is currently a student at the University of Denver College of Law.

The four stockholders of a corporation entered into a stock redemption agreement, under the terms of which the corporation bought insurance on their individual lives to fund the agreement. The corporation paid the premiums and owned all rights in the policies, except that each stockholder was allowed to designate the beneficiary of the policies carried on his life. At the death of a stockholder, the corporation was to transfer the decedent's insurance to the named beneficiary for collection, and transfer to itself as much of the stock as could be purchased by the proceeds at a predetermined price. The beneficiary was to get either the value of the decedent's stock or the insurance on the decedent's life, whichever was greater. Stock value was set by vote of the shareholders periodically, or by arbitration if necessary. Any funds for the agreement were to come out of surplus, and if the corporation were unable to pay the premiums out of surplus at any time, the agreement would end, the corporation would be named as beneficiary of the policies, and would hold them as ordinary corporate assets. The corporation did not claim the premiums as a deduction on its income tax, but accounted for them as an asset on its balance sheet. The Tenth Circuit Court of Appeals held that the premiums were not constructive dividends to the individual stockholders. *Sanders v. Fox*, 253 F.2d 855 (10th Cir. 1958).

Similarly, in another recent case, *Prunier v. Commissioner*,[1] insurance was used to fund a buy-out agreement between two brothers, the officers and 97% stockholders of the corporation. Although the insurance policies were all applied for by the brothers as individuals, and the corporation was not named as beneficiary until some time after the Commissioner had questioned the corporate ownership, the First Circuit Court of Appeals found that under controlling state law the corporation was the beneficial owner, and could have obtained the proceeds if the insurance had matured during the tax year in question. On this ground, the court held that the premiums paid were not taxable as income to the stockholders.

On the other hand, in *Paramount-Richards Theatres, Inc. v. Commissioner*,[2] there was an agreement between stockholders providing that one stockholder would buy the stock of the other at the latter's decease. This purchase was to be funded in part by insurance on the life of the

---

1 248 F.2d 818 (2d Cir. 1957), reversing 28 T.C. No. 4 (1957).
2 153 F.2d 602 (5th Cir. 1946).

stockholder, paid for by the corporation, but owned by the insured. The court in this case found that both stockholders stood to benefit equally from the payment of premiums by the corporation, but that the corporation itself stood to gain nothing, and held that the premium payments in question constituted dividend income to the insured stockholder, and were taxable to him.[3]

The Commerce Clearing House tax reporter,[4] in an editorial comment on the Internal Revenue Service *Tax Guide for Small Business,* says that the IRS position on life insurance premiums paid by a corporation when both corporation and stockholders benefit from the payment is that the amount of premiums may be regarded as constructive dividends, especially when a closely held corporation is involved. But the Tenth Circuit, in passing on the *Sanders* case, specifically rejected the test of "weighing the ultimate purposes to be served and the potential benefits"[5] which might accrue to either the corporation or the individual stockholders—on the ground that such a test was "impractical." They held that "the correct rule must limit the analysis to those benefits 'presently realized' . . . . (by the stockholder)."[6]

The court in *Sanders* has unquestionably accepted buy-sell agreements as being of benefit to the corporation. In *Emeloid Co. v. Commissioner,*[7] an action brought under the Excess Profits Tax Act, the corporation had bought single-premium life insurance on its two principal stockholder-officers, as key-man insurance, with the corporation named as beneficiary. When a subsequent trust agreement established a buy-sell agreement funded by this insurance, the Commissioner sought to tax the corporation on the premiums paid for the insurance. The court held that the premiums represented "borrowed invested capital" within the meaning of the act, and not dividends; and they announced for the first time that "continuity" and "harmony" of management are legitimate

---

[3] Accord, Yuengling v. Commissioner, 69 F.2d 971 (3d Cir. 1934); Earl E. Jameson, P-H 1942 B.T.A. Mem. Dec. § 42,042; cf. Casper Ranger Construction Co., 1 B.T.A. 942 (1925).
[4] 6 CCH 1958 Stand. Fed. Tax Rep. § 8770.
[5] 253 F.2d at 860.
[6] Id. at 858-59.
[7] 189 F.2d 230 (3d Cir. 1951).

objectives of a corporation in disbursing its funds[8] — a view expressly applied in the *Sanders* and *Prunier* cases.

A recent case pointing up "corporate benefit" is *Casale v. Commissioner.*[9] The taxpayer was the 98% stockholder of a corporation, and its president. He entered into a deferred compensation agreement with the corporation, contingent on his not leaving the corporation or competing with it "against its wishes." The corporation was authorized at the same time, but in a separate corporate transaction, to purchase and pay premiums on an annuity policy. The corporation was the declared owner of the policy, and the beneficiary, but Casale had the right to change the beneficiary under the terms of the agreement. The policy was carried as an asset on the corporate books, and the corporation could assign the policy or borrow against its loan value. The Tax Court found that the taxpayer had not dealt "at arm's length" with his corporation. They held, in effect, that the transaction was a "sham." It was stated that Casale "was the corporation,"[10] and that the corporation was merely a "conduit"[11] for passing the benefits to him.

The Second Circuit, in reversing the Tax Court, noted that the corporation was not a "sham," but a legitimate business enterprise. They held that Casale did not realize any benefit from the policy, for various reasons. The primary reason seemed to be that there was no guarantee that the funds from the policy would be available to pay the agreed compensation, since the policy was a corporate asset and thus subject to the fortunes of the business. It could be reached by creditors as could any other corporate asset. The opinion stressed the point that the corporation might benefit by having the proceeds to discharge the corporate obligation incurred under the deferred compensation agreement, but that it might also benefit by having the policy available to creditors in case of corporate insolvency.

This reasoning would also seem appropriate to the buy-out agreement cases: Whether or not the corporation uses the funds to carry out the agreements, it will get a corporate benefit from their use, possibly as collateral for needed loans, or in case of corporate insolvency, to pay creditors. Further, this argument underlines the fact that the individual stockholders may never receive any benefit from the policies.

The *Casale* case seems to roughly equate "corporate benefit" with corporate ownership of the policies, an idea which seems to be implicitly accepted in both the *Sanders* and *Prunier* decisions. This idea would appear to be justifiable in most cases: If the corporation owns the policies, they are still subject to the hazards of the business, as was pointed out above, but if the taxpayer owns them, it would appear that for all practical purposes he has received an economic benefit "unqualifiedly subject to his demand."[12] This idea, furthermore, would explain the court's holding in the *Sanders* case that the stockholder had received no "benefits 'presently realized' . . . . "

---

8 Accord, Fred F. Fischer, 6 CCH Tax Ct. Mem. 520 (1947).
9 247 F.2d 440 (2d Cir. 1957), reversing 26 T.C. 1020 (1956).
10 26 T.C. at 1025.
11 Ibid.
12 Hadley v. Commissioner, 36 F.2d 543, 544 (D.C. Cir. 1929).

Several cases have been decided on the question of whether premiums paid by a corporation may be construed as income to an employee. It is clear that a premium payment which is essentially in the nature of compensation is taxable. The courts have found in any one of several ways that a premium payment was intended as compensation: If the payment is charged to expense on the corporate books,[13] or if no reservation is made to the corporation as to ownership of the policy or power to designate beneficiaries,[14] or even where the corporation has the power to designate the beneficiaries but it has been exercised in favor of the employee's family or estate,[15] such payment has been held to be compensation, and taxable to the individual.

The analogy between these cases and the problem presented in the principal case was recognized by the Tenth Circuit when they said, "These cases demonstrate the alternative rules that if the corporation pays premiums on a policy on the life of an employee or stockholder as its own investment no tax consequences to the insured arise, but if it pays the premiums on the policy owned by the insured and of which he designates the beneficiary the amount paid in premiums constitutes taxable income to him."[16]

Only one case has been found where it was held that the taxpayer had not received income when he owned the policies completely. In *Lewis v. O'Malley*,[17] the president and sole stockholder of the corporation applied for and was issued two single-premium insurance policies on his life, which were paid for by the corporation. He was the true owner, could and did designate the beneficiary (his estate, his family, and a charitable religious institution were designated at various times), and no reservation of an interest in the policies was made to the corporation in any form. The Commissioner charged Lewis with having received a dividend in the amount of the premiums paid by the corporation. The Eighth Circuit found in favor of the taxpayer. The court found that the policies were always treated as a corporate asset. They were carried on the books as such, loans were made directly to the corporation on the policies, and the policies were eventually surrendered and their surrender value returned to the corporation. But in spite of this decision, it would seem that unless the stockholders can clearly show that the policies are in fact corporate assets, they run the risk of being taxed on the premiums if they own the policies as individuals. One may wonder how the *Lewis* case might have been decided if at the time of decision the policies were still in force, and owned by the taxpayer.

So although the stockholders may be allowed to designate beneficiaries and the life insurance may be made an integral part of the buy-sell agreement without tax consequences to the individual stockholder, the safest approach in funding such agreements with life insur-

---

[13] Commissioner v. Bonwit, 87 F.2d 764 (2d Cir.), cert. denied, 302 U.S. 694 (1937); Canaday v. Guitteau, 86 F.2d 303 (6th Cir. 1936). For a similar holding as to annuities, see United States v. Drescher, 179 F.2d 863 (2d Cir. 1950); Renton K. Brodie, 1 T.C. 275 (1942); cf. Card v. Commissioner, 216 F.2d 93 (8th Cir. 1954).
[14] Commissioner v. Bonwit, supra note 13; Canaday v. Guitteau, supra note 13.
[15] N. Loring Danforth, 18 B.T.A. 1221 (1930).
[16] 253 F.2d at 859-60.
[17] 140 F.2d 735 (8th Cir. 1944).

ance would be to make the corporation clearly the owner of the policies, and make the policies a corporate asset, not reserved to any particular use. Further, it should be borne in mind that the Commissioner has not, at this time, acquiesced in these decisions.

The court, in passing on the principal case, remarked that different problems will arise at the death or withdrawal of one of the stockholders. At that time the question of constructive dividends may again be raised. But if, as seems likely, the decisions in *Sanders v. Fox* and *Prunier v. Commissioner* are followed, premiums paid by a corporation on policies owned by the corporation will not be taxable to the stockholder at the time of their payment.

Income Taxation — Ordinary and Necessary Business Expenses — Fines for Operating Overloaded Trucks Not Deductible

BY PHILIP C. PRESTON

Philip C. Preston received his B.S. in Business Administration in 1949 and his Master's degree in Business Administration in 1957, both from the University of Denver. He is a Certified Public Accountant and is presently a freshman in the University of Denver College of Law.

Plaintiff, a trucking company, deducted under § 23 (a) (1) (A) of the Internal Revenue Code of 1939 fines paid for inadvertent violations of state statutes prescribing maximum truck axle weight limits.[1] These violations usually resulted from shifting of loads during transit or from reliance on the weight stated in bills of lading inaccurately compiled in small communities having no weighing facilities. The federal court denied the deduction, and the Sixth Circuit affirmed. On certiorari, the United States Supreme Court affirmed, holding that the fines were not "ordinary and necessary business expenses" since the violations could have been avoided. Since the state statutes did not make a distinction between innocent and willful violators, allowance of the deduction for inadvertent violations would have severely and directly frustrated state policy. *Hoover Motor Express Co. v. United States,* 78 Sup. Ct. 511 (1958).

A companion case, decided the same day, concerned another trucking company which attempted to deduct, as ordinary and necessary business expenses, fines paid by the firm and its drivers for violations of state maximum weight laws. Pennsylvania state weight laws made it impossible for truckers to comply and still operate profitably.[2] In order to continue in business, this particular trucker (like many others) had to overload and run the risk of being fined for violating the law. The company paid numerous fines and deducted them as ordinary and necessary business expenses. The Commissioner denied the deduction, the Tax Court upheld his ruling, and the Third Circuit affirmed. On certiorari, the United States Supreme Court affirmed, holding that there was no merit to petitioner's argument that the fines imposed were not penalties at all, but merely a revenue toll. The State assessed these fines as a penal measure, and their allowance as a deduction would frustrate a sharply defined state policy. *Tank Truck Rentals, Inc. v. Commissioner,* 78 Sup. Ct. 507 (1958).

The argument of the petitioner in the *Tank Truck Rentals* case (contending that the fines assessed were actually revenue tolls) is par-

---

[1] "Sec. 23. Deductions from gross income.
"In computing net income there shall be allowed as deductions:
"(a) Expenses.
"(1) Trade or business expenses.
"(A) In general. All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . . ." Int. Rev. Code of 1939, § 23 (a) (1) (A), as amended, 56 Stat. 819 [now, Int. Rev. Code of 1954, § 162(a)].

[2] The law was later changed, Pa. Stat. Ann., Tit. 75, § 453 (Purdon Supp. 1957).

allel to the reasoning of the Internal Revenue Service itself when it issued a special ruling in September of 1942 that such fines were deductible.[3] That ruling remained in effect until it was rescinded by a new ruling of the Commissioner issued November 30, 1950.[4] Since that time, the Commissioner and the courts have generally held that these penalties are punishments inflicted by the state on those who commit acts violating fixed public policy, and that to permit a violator to gain a tax advantage through deducting the amount of the penalty as a business expense and thus mitigate the degree of punishment, would frustrate the purpose and effectiveness of that public policy.[5] The application of the public policy standard has been tempered in cases involving innocent violation of statutes where the statute itself makes a definite distinction between innocent and willful violations.[6]

The concept that the deductibility of business expenses is subject to an overriding limitation of so-called public policy was also recently considered by the Supreme Court in the *Sullivan* case with regard to rent and wages paid by bookies.[7] A bookmaker hired employees to help in his gambling operations and rented premises in which he carried on his bookmaking. The taxpayers, whose activities were alleged to be illegal under Illinois law,[8] sought to deduct these as ordinary and necessary business expenses. The Supreme Court held both items to be deductible business expenses which should not be disallowed on the basis of public policy. The Court first pointed out that the Treasury Department itself recognizes gambling as a business. For example, the regulations make the federal excise tax on wages a deductible item.[9] They then point out that the ordinary and necessary expenses of a business, like rent and wages, should be deductible, otherwise the income tax would be levied on gross rather than net income.

The question presents itself: why, then, when violation of a statute has traditionally been a major ground for testing conflict with public policy,[10] was not the violation of the statute in the *Sullivan* case determinative, as it was in both the *Hoover Motor Express* and *Tank Truck Rentals* cases? The crux of the court's reasoning in these two apparently conflicting decisions seems to be the illegality of the act creating the expense (violation of trucking statutes) as contrasted to expenses ordinarily legal (payment of rent) incurred in connection with an illegal activity. Congress has consistently rejected provisions which would deny deductions for illegal activities. The object of the Revenue Act of 1913, the language of which in regard to this section has been carried forward, was not "to reform men's characters."[11] In 1951, Senator Kefauver sought unsuccessfully to amend § 162 by prohibiting deductions "for any ex-

[3] Commissioner letter issued on September 10, 1942, published in P-H 1950 Fed. Tax Service § 76,321.
[4] I.T. 4042, 1951-1 Cum. Bull. 112.
[5] Commissioner V. Longhorn Portland Cement Co., 148 F. 2d 276 (5th Cir. 1945).
[6] Commissioner v. Pacific Mills, 207 F.2d 177 (1st Cir. 1953); National Brass Works v. Commissioner, 182 F.2d 526 (9th Cir. 1950); J. Rossman Corp. v. Commissioner, 175 F.2d 711 (2d Cir. 1949).
[7] Commissioner v. N. Sullivan, 78 Sup. Ct. 512 (1958).
[8] Ill. Rev. Stat., 1945, C 38, § 336.
[9] U.S. Treas. Reg. 118, § 39.23(a)-1 (1953); Rev. Rul. 54-219, 1954-1 Cum. Bull. 51.
[10] 6 Corbin, Contracts §§ 1373-74 (1950).
[11] 50 Cong. Rec. 3850 (1913).

pense paid or incurred in or as a result of illegal wagering."[12] Prior to the recodification of the Code in 1954, the American Law Institute unsuccessfully recommended that Congress change the statute to disallow deductibility of illegal expenses.[13]

The public policy concept has been extended to illegitimate expenses of an illegitimate business,[14] but the most recent Tax Court decision allowed a deduction for expenses which appear to be of an illegitimate nature (costs of printing lottery tickets) pointing to the *Sullivan* case as authority.[15]

As the Court pointed out in the *Sullivan* case, deduction does not turn on general equitable considerations but depends on legislative grace.[16] Although the decisions in the trucking cases may appear to be somewhat harsh when contrasted with the *Sullivan* case, none of the cases departed from the trend that the courts have taken with regard to the two situations presented. Congress is apparently averse to utilizing the tax code to help stamp out organized crime, so the courts have shied away from use of the public policy concept in this area. Since the sometimes necessary violations of legitimate businesses have not been subject to such "legislative grace," the Commissioner and the courts have made full use of the concept in cases involving these violations.

---

[12] 97 Cong. Rec. 12230-31, 12244 (1951).
[13] A.L.I. Fed. Income Tax Stat. § X 165 (i) (1) (Feb. 1954 Draft).
[14] Comeaux v. Commissioner, 176 F.2d 394 (10th Cir. 1949).
[15] L. Cohen, 17 CCH Tax Ct. Mem. 284 (April 8, 1958).
[16] Deputy v. Du Pont, 308 U.S. 488 (1940).