



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
MRS. YVONNE C. S. LINDBLOM )

Appearances:

For Appellant: John L. Flynn

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; James J. Arditto, Franchise Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1939, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Mrs. Yvonne C. S. Lindblom to his proposed assessment of additional tax of \$273.06 for the years 1937, 1938, 1939 and 1940.

Appellant is the owner of substantial investments in securities, country land, ranch properties and oil leases. In the years under review she made certain expenditures for office expense and salary of an active business manager, which were deducted from gross income on her returns under the Personal Income Tax Act, as originally filed. Section 8(a) of this act, insofar as pertinent, provides that "In computing net income there shall be allowed as deductions:(a) All the ordinary and necessary expenses paid or ~~in-~~**incurred** during the taxable year in carrying on any trade or ~~business~~**ness**, . . ."

The United States Supreme Court in Higgins vs. Commissioner 312, U.S. 212 (1941) held that the mere taking care of personal investments, no matter how extensive, did not constitute the engaging in a trade or business, and office rentals and managerial salaries were not deductible, unless incurred in connection with activity for profit in dealings directly **or** indirectly with the general public. It was similarly held in the case of Meanley vs. McColgan, 49 Cal. App.(2d) 203. The Federal Revenue Act of 1942, by retroactive amendment, provided for the deduction of all expenses incurred in the production of income. Section **8(a)(2)** of the Personal Income Tax Act was amended, effective May 7, 1943, to similar effect.

Appellant contends that the 1943 amendment had retroactive effect, permitting deduction for the years in question of the disallowed expenses. We cannot agree with her conclusions. The amendment to Section **8(a)(2)** was applicable only to years beginning after December 31, 1942. To give retrospective application would be violative of Article IV, Section 31 of the State Constitution.

Appeal of Mrs. Yvonne C. S. Lindblom

Opinion of Attorney General, NS-3802, dated October 2, 1941.

Opinion of Attorney General, NS-4730, dated February 15, 1943.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protests of Mrs. Yvonne C. S. Lindblom to the proposed additional assessment of \$273.06 for the taxable years 1937, 1938, 1939, and 1940 be, and the same is hereby, . sustained.

Done at Sacramento, California, this 23rd day of September, 1943, by the State Board of Equalization.

R. E. Collins, Chairman  
J. H. Quinn, Member  
Wm. G. Bonelli, Member  
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary