



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CLARA EDGAR SACHS)

Appearances:

For Appellant: Hone & Hone, Donald Lobree, Attorneys
at Law

For Respondent: W. M. Walsh, Assistant Franchise Tax
Commissioner; Mark Scholta, Associate
Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code (formerly Section 19 of the Personal Income Tax Act) from the action of the Franchise Tax Commissioner in overruling the protest, of Clara Edgar Sachs to a proposed assessment of additional tax in the amount of \$312.83 for the taxable year ended December 31, 1935.

The proposed assessment is attributable to the Commissioner's disallowance of a deduction for a bad debt of \$1,400 and for attorney fees, to the extent of \$14,500.00 as a business expense. The bad debt item has not been contested by the Appellant, however, so the only question presented for decision is whether the disallowance of the attorney fees was proper. It is Appellant's contention that she was engaged in the trade and business "of investments" by virtue of the fact that she devoted considerable time to the handling of her extensive investments in stocks, bonds and real estate, and that attorney fees paid for advice and counsel in connection with these activities are deductible under Section 8(a) of the Personal Income Tax Act, as enacted in 1935, as an ordinary and necessary expense "paid . . . during the taxable year in carrying on any trade or business . . ." Furthermore, Appellant maintains that the Commissioner cannot take the position, on this appeal, that Appellant's activities did not constitute the carrying on of a trade or business inasmuch as the Commissioner disallowed the deduction of attorney fees only to the extent of \$14,500.00, whereas a deduction in the amount of \$17,500 was actually taken by Appellant on her return for the year involved. The Commissioner disallowed \$2,500 of this deduction as a personal expense and allowed \$3,000 as a business expense. The remaining \$12,000 was disallowed on the ground that inasmuch as the \$17,500 covered services to be rendered over a five-year period, only one-fifth of the \$15,000 (\$17,500 less \$2,500 personal expenses) was deductible in 1935: He now contends, however, that the \$17,500

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should have been disallowed in its entirety, although he is **precluded** by the statute of limitations from taking any further action with respect to the **\$3,000** allowed. The Appellant argues, on the other hand, that the allowance of the deduction to the extent of **\$3,000.00** necessarily involved a **determination** by the Commissioner that her activities did constitute the carrying on of a trade or business and that the Commissioner cannot now depart from that determination.

We have previously held (Appeal of Great Northern Railway Company, November 15, 1939) that we are not concerned with the manner in which the Commissioner determines the additional amount of tax proposed to be assessed? but rather with the question whether under the law that **additional** amount, of tax is due. In the instant appeal, whether the additional amount of tax is due is entirely dependent upon whether the attorney fees, to the extent of **\$14,500.00**, are allowable under the law as an expense paid in carrying on a trade or business. The Commissioner maintains that Appellant was not **engaged in carrying on a trade or business inasmuch as it has been held in Meanley v. McColgan, 49 Cal. App. 2d 203 and Higgins v. Commissioner, 312 U.S. 212, that the mere handling of personal investments, no matter how extensive, does not constitute the carrying on of a trade or business within the purview of Section 8(a), as originally enacted, or the equivalent Federal provision in the Revenue Act of 1932. The Appellant has made no showing that her activities in connection with stocks and bonds extended beyond the handling of her personal investments. There is no evidence that Appellant held herself out to third persons as being engaged in the business of selling securities, nor has it been established that any portion of the fees, to an extent exceeding the **\$3,000.00** allowed by the Commissioner, was incurred and paid **solely** in connection with the rental of Appellant's real property.**

We conclude, accordingly, upon the basis of the foregoing authorities, that the fees disallowed by the **Commissioner** were not paid in the course of carrying on a trade or business and that the Commissioner's action must be sustained.

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, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of **Clara Edgar Sachs** to a **proposed** assessment of additional tax in the amount of \$312.83, for the taxable year ended December 31, 1935, be and the same is hereby sustained.

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Done at Sacramento, California, this 24th day of July,
1947, by the State Board of Equalization.

Wm. G. Bonelli, 'Chairman
Geo. R. Reilly, Member
J. H. Quinn, Member
Jerrold Seawell, Member

ATTEST: Dixwell L. Pierce, Secretary