



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
NOUMI FISCHER and AUDREY FISCHER }

Appearances:

For Appellant: Noumi Fischer

For Respondent: Burl D, Lack, Chief Counsel

O P I N I O N

This appeal is made pursuant to Section 1.8593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Noumi Fischer and Audrey Fischer to proposed assessments of additional personal income tax in the amount of \$9.00 against Noumi Fischer for the year 1947, and in the amount of \$8.00 against Noumi Fischer and Audrey Fischer for each of the years 1948 and 1949.

Appellants are husband and wife,, Noumi Fischer (hereafter referred to as Appellant) filed a separate return for the year 1947, and he and Audrey Fischer filed joint returns for the year? 1948 and 1949.

Appellant was formerly married to Jeanette Fischer (now Jeanette Violin), and they had two sons born in 1936 and 1942, respectively. They were divorced in 1945 and Jeanette was awarded custody of the two boys. The court ordered Appellant to pay \$80 a month for the support of his children, Under a property settlement agreement in connection with the divorce, Jeanette was awarded the home free of encumbrances and Appellant agreed to keep in force then existing life insurance policies in the total amount of \$9,000 for the benefit of the children during their minority.

Both Appellant and Jeanette claimed the credit for dependent: for each of the sons on personal income tax returns filed for the years in question, The Franchise Tax Board denied the credits to Appellant, The question is whether Appellant contributed more than half the support of his sons during each of the years, as provided in Sections 17952 and 17952.1 of the Revenue and Taxation Code. The California statute is substantially similar to Section 25(b)(3) of the Internal Revenue Code.

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Appellant contributed, pursuant to the decree, \$960 in 1947, \$960 in 1948, and \$930 in 1949 for the support of his children. He paid premiums of \$228, \$238, and \$228 in each year, respectively, on the insurance policies. Jeanette informed the Franchis Tax Board that she spent an average of \$2,963 for the support of the boys during each of the years in question, which included the contributions received from Appellant. Appellant questions the validity of the amounts and the propriety of the type of expenditures included in her account but is in the unfortunate position of being unable to disprove any particular items. He makes no claim that Jeanette had insufficient income of her own to contribute support in an amount greater than he contributed. Jeanette did not testify at the hearing of this appeal.

We can give little weight to Appellant's doubts regarding the propriety of the type of expenditure he believes included by Jeanette in her estimate of the amount spent for support. Support is not defined in the statute or regulations, and we have found no authority that indicates any limitation other than actual payments for the direct benefit or welfare of the child. This apparently may include board, lodging, clothing, education, medical and dental care, maid, recreation, musical education, educational insurance policy, and so forth. See Rev. Rul. 235, 1953 I.R.B.-22; William L. Leino, T.C.M. Dec., Dkt. No. 47075, entered December 17, 1953; Miriam G. Sauer, T.C.M. Dec., Dkt. No. 39303, entered December 7, 1953.

The value of the use of the home awarded Jeanette is not to be considered in computing the amount of support, since it is not a contribution made by Appellant during the year. Edward J. Banzhaf, T.C.M. Dec., Dkt. No. 37500, entered August 31, 1953.

The payments for premiums on Appellant's life insurance policies are not includible as support for the children. The policies are owned by the Appellant and were required only to secure support for the children during their minority in the event of Appellant's death. The beneficiaries have only a contingent interest in the policies. It has been held in the case of similar insurance to secure payment of alimony that the premium payments were not includible as payment of alimony. Smith's Estate v. Commissioner, 208 Fed. 2d 349. In Joseph P. Rinnert, T.C.M. Dec., Dkt. No. 41980, entered June 10, 1953, a case in which the facts were similar to those herein, the court did not include premium payments on insurance to guarantee continued payment of support, the opinion omitting any discussion of the matter. See also Miriam G. Sauer, supra.

Mr. Fischer has indicated that he has paid arrearages pursuant to a court order retroactively increasing the monthly support payments for the years in question. We have weighed the possibility of taking these payments into consideration, but we have concluded that this would be improper as the money was not

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contributed by Appellant in those years. In accord is Rev. Rul. 220, 1953 I.R.B.-22.

Appellant has vigorously contended that inasmuch as he made the payments which the court ordered and which it ~~decreed~~ sufficient for the support of the children he should therefore be allowed the credit for dependents. We know of no authority for this construction of the statute. On the contrary, numerous decisions of the United States Tax Court have denied the credit to fathers who have made the support payments required by a divorce decree, because of the failure of such parent to prove that he has contributed over half the support. Edward J. Banzhaf, supra; Joseph P. Rinnert, supra; Harry Zippin, T.C.M. Dec., Dkt. No. 38324, entered October 27, 1953.

Appellant's claim that, in any event, he should be allowed a credit for one dependent is without merit. The court order required payments of \$40 a month for the support of each child and there is no evidence that the payments were applied otherwise. There is no basis for apportioning the dependents. Ollie J. Kotlowski, 10 T.C. 533; Louis Adler, T.C.M. Dec., Dkt, No. 17255, entered July 25, 1950.

In view of the great weight of authority requiring the taxpayer who claims a credit for a dependent to prove that he contributed over half the support, and because of Appellant's failure or inability to show the total amounts spent for the support of his children, or the inability of their mother to contribute, we must sustain the Franchise Tax Board's disallowance of the credits claimed by Appellant,

ORDER

Pursuant to the views expressed in the opinion of this 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 the Franchise Tax Board on the protests of Noumi Fischer and Audrey Fischer to proposed assessments of additional personal income tax in the amount of \$9.00 against Noumi Fischer for the

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year 1947, and the amount of \$8.00 against Noumi Fischer and Audrey Fischer for each of the years 1948 and 1949, be and the same is hereby sustained.

Dated at Sacramento, California, this 15th day of December, 1954, by the State Board of Equalization.

Geo. R. Reilly, Chairman

J. H. Quinn, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Thomas H. T. Morrow, Acting Secretary