BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
REGINALD G. AND MARY LOUISE HEARN)

Appearances:

For Appellants: Reginald G. Hearn, in pro. per.

For Respondent: Wilbur F. Lavelle
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the 'Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Reginald G. and Mary Louise Hearn against proposed assessments of additional personal income tax in the amounts of $333.03, $611.76, and $1,032.22 for the years 1954, 1955, and 1956, respectively.

Since Mary Louise Hearn is involved in this, appeal solely because she filed joint returns with her husband, Reginald G. Hearn, Mr. Hearn will alone be referred to hereafter as "appellant."

The issue presented by this appeal is whether appellant is entitled to deduct as business expenses a larger amount than that allowed by respondent Franchise Tax Board.

Appellant is engaged in the practice of law in San Francisco, California. His annual gross income therefrom for the years 1954, 1955, and 1956, respectively, was $48,368, $52,110, and $79,142. On his state and federal income tax returns for those years he deducted various amounts as business expenses.

The United States Internal Revenue Service disallowed substantial portions of the deductions claimed on the federal returns and respondent, upon learning of that action, issued proposed assessments based on the disallowance of equivalent deductions claimed on the state returns. The deductions claimed on the returns and the amounts allowed by the taxing agencies were as follows:

	1954		1955		1956	
	Claimed	Allowed	Claimed	Allowed	Claimed	Allowed
Travel & entertainment	$ 9,892	$1,400	$10,392	$ 1,692	$13,380	$ 1,780
Promotion	910	50	560	60	424	74
Taxi Fares	372	100	0	0	499	99
Auto	1,965	655	2,270	670	1,812	562
Clubs & dues	537	268	1,595	295	1,000	1,000
Boat	0	0	0	0	2,052	0
Contributions	175	0	40	0	93	0
Advances	0	0		0	3,640	0
	$13,851	$ 2,473	$14,857	$ 2,717	$22,900	$ 3,515
Other expenses	10,436		10,857	8 5 7	12,806	12,806
	$24,287	$12,909	$25,714	$13,574	$35,706	$16,321

Respondent withheld further action on its proposed assessments pending the outcome of litigation commenced by appellant to reverse the disallowances made by the Internal. Revenue Service. Those disallowances were sustained by the United States Tax Court and the Tax Court's decision was affirmed by the Ninth Circuit Court of Appeals. (Reginald . Hearn, 36 T.C. 672, aff'd, 309 F.2d 431.) Respondent then issued notices of action affirming its proposed assessments and this appeal followed.

Section 17202 (formerly 17301) of the California Revenue and Taxation Code allows the deduction off "... all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . .." This provision is the same as that in section 162 of the United States Internal Revenue Code of 1954.

The disposition of appellant's case on the federal level, after review by both trial and appellate courts, is highly persuasive of the result that should be reached here. As he did in the federal courts, appellant here argues that his income as an attorney was attributable in large part to his entertainment of clients and prospective clients and to his participation in private clubs. He states that he embarked on a program of extensive entertainment and participation in clubs solely to increase his income and that his income rose markedly as a result. He also states that his practice covers an area of 150 miles and that he incurred substantial travel expenses, including the cost of overnight trips.

Appellant contends that the disposition of his case by the federal courts should be disregarded because he failed to present in the Tax Court certain records which he has presented to us. These records consist of invoices from restaurants, clubs, garages, and service stations, together with numerous canceled checks. All of the amounts shown on the invoices and checks plus other estimated amounts are claimed by appellant as deductible business expenses. The invoices appear to cover every charge made by appellant in the course of each year at the establishments that issued the invoices. Most of the checks are made out to "cash" and do not indicate where or how the amounts were spent.

Although these records were not submitted to the Tax Court, we do not believe that they advance appellant's cause. The following comments by the Tax Court remain pertinent:

> The expenses in question are of such nature as to afford considerable opportunity for abuse) and it is not too much to ask of a taxpayer seeking the benefit of such deductions that he offer not only reasonably satisfying proof that the expenses were in fact incurred but also that they bore 'a proximate relationship to the conduct of his business .... Petitioner's admission on cross-examination that some of the claimed expenses. related to the cost of meals for himself and his wife, possibly in the company of others not convincingly shown to have any business connection with petitioner, was hardly reassuring. For aught we know other expenses in controversy may have been wholly personal, or their relationship to petitioner* s business may have been so remote as to fail to qualify for deduction.

In a somewhat different category than most of the expenses claimed are advances in the amount of $3,639.94 which appellant made in 1956 on behalf of his clients with respect to cases pending in his office. Appellant deducted these advances because he thought their recovery was doubtful. The Tax Court held that the advances could not be deducted as business expenses and that the evidence did not establish that they represented debts which became worthless in 1956. There is no more evidence before us concerning these advances than there was before the Tax Court.

After considering all of the evidence and arguments, we must sustain respondent's action. Respondent allowed a portion of most of the claimed deductions and, as stated by the Tax Court with respect to similar action by the Internal Revenue Service, we cannot say on this record that-appellant is entitled to anything in excess of that allowed.

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 the Franchise Tax Board on the protests of Reginald G. and Mary Louise Hearn against proposed assessments of additional personal income tax in the amounts of $333.03, $511.76, and $1,032.22 for the years 1954, 1955, and 1956, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of May, 1967, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Secretary