

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
GLENN T. AND STELLA DODGE }

Appearances: .

For Appellants: Stella Dodge, *in pro. per.*

For Respondent: John D. Sahell
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 protest of Glenn T. and Stella Dodge against a proposed assessment of additional personal Income tax in the amount of \$85.71 for the year 1966.

The sole question for decision is whether the cost of tuition for two minor boys at a school for gifted children constituted a deductible medical expense.

Appellants, husband and wife, are residents of Huntington Beach, California. In January of 1966 they placed their two sons, ages nine and twelve, in the Eldorado School for the Gifted Child (hereafter referred to as Eldorado), a private school located in Orange, California. Prior to that time the boys had attended public schools. Appellants' sons attended classes at Eldorado for the full 12 months of 1966, but they continued to live at home during that period.

Eldorado's enrollment in 1966 was approximately 170 students, ranging in age from four to seventeen. One

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of **Eldorado's** student entrance requirements was a minimum intelligence quotient of 130. The school was operated on an ungraded basis, **class** groupings being determined by student ability rather than by chronological age. Classes were small and, as a result, each pupil received substantial individual attention and instruction.

The director of Eldorado was Glory **Ludwick**, M.D., a psychiatrist. She was the only member of **Eldorado's** staff who had medical training; however, the other regular teachers **did** receive some in-service training from her with respect to the handling of emotional problems of students. **While** they attended Eldorado in 1966, **appellants'** sons received no intensive psychiatric care, although Dr. **Ludwick** apparently held consultations with them five or **six times** during the year.

In their personal income tax return for 1966 appellants claimed a medical deduction of **\$2,857.00**, the cost of one year's tuition for their two sons at Eldorado. Respondent disallowed that deduction on the ground that the expenditure for tuition constituted a nondeductible personal expense.

Appellants contend that the placement of their children in Eldorado was necessary **for** medical reasons because the boys were **highly** intelligent and very **sensi-**tlve, and they therefore encountered great trauma and frustration in the slower-paced public schools. Although the **children** were not emotionally disturbed to the point of needing drugs **or** psychiatric care at the **time** they entered Eldorado, appellants state that they were concerned that if their boys continued to attend public schools, emotional disturbances and eventual delinquency **might** result. In support of their contentions, appellants have submitted statements from two physicians. The **first**, dated February 15, 1967, is signed by one **Martin J. Gavin, M.D.**, a specialist in internal medicine practicing in Anaheim, California. It reads as follows:

It was realized some **time** ago that the Dodge children were exceptional with extremely **high** intelligence quotients, it was felt that they were inadequately challenged **intellec-**tually by the public school system; and that they, therefore, were underachieving at school; For this reason it was advised that they be entered **in** private school in order that they **might** achieve a greater **stimulus**.

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The second statement, dated April 5, 1968, is signed by Glory Ludwick, M.D., the director of Eldorado. It reads:

Steve and Tom Dodge, now aged 14 and 11, have been enrolled in the Eldorado school since January 1966. I tested them at entrance and found them to be extremely sensitive, to the extent that they cried when they couldn't answer correctly. Such children **can't** be educated in public schools without extensive emotional trauma and **high risk** of mental illness. **Since** the Eldorado School **is** able to educate them without the precipitation of such illness it is **in my opinion** that it is medically (**psychiatrically**) **necessary** for these boys.

As a general rule, under both California and federal income tax law, no deduction **is** allowed for personal, living, or family expenses. (Rev. & Tax. Code, § 17282; Int. Rev. Code of 1954, § 262) Normally, the cost of **educating one's** children falls within those **classes** of **nondeductible** expenses. (Everett F. Glaze, T.C. Memo., Aug. 30, 1961.) In special circumstances, however, the **federal tax courts** have allowed the deduction of a portion of the cost of an emotionally **disturbed child's** attendance at a special **school**, on the ground that that expenditure **was** actually a payment for medical care under section 213 of the Internal Revenue Code of 1954. (C. Fink Fischer, 50 T.C. 164; Hobart J. Hendrick, 35 T.C. 1223.)

Under the applicable state and federal regulations, **in** order for educational costs to be treated as a medical expense the individual must be in an institution or must attend a special school with resources for alleviating **his** particular physical or mental handicap, and such resources must be a principal reason for **his** presence there. (Cal. Admin. Code, tit. 18, reg. 17253-17256(a), subd. (b)(v)(a); Treas. Reg. § 1.213-1(e)(1)(v)(a); Estate of Reuben A. Baer, T.C. Memo., Feb. 27, 1967.) **In the event that the individual's primary reason** for attending a **special school is** to obtain a good **education**, rather than to receive medical or psychiatric care, the cost of attending such a **school** does **not** qualify as a medical expense. (Maurice Felnberg, T.C. Memo., June 24, 1966.) This **determination of nondeductibility is not** altered by the **fact that the individual's** general physical or mental health improves as a result of **his** attendance

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at the special school. (Arnold P. Grunwald, 51 T.C. 108.)

In the Fischer and Hendrick cases cited earlier, in which a portion of the cost of sending a child to a special school was allowed as a medical expense, the children in question were severely emotionally disturbed before entering the special schools. They were placed in those schools upon the specific recommendation of independent psychiatrists. In both cases the children lived at the school and received intensive psychotherapy from staff members, as well as a formal education. In each case the court held that that portion of the tuition fees which could be attributed to the psychiatric care received by the child while at the school was deductible, The remainder of the tuition was treated as a nondeductible personal expenditure for the child's education.

The federal tax courts have denied any medical expense deduction in several cases where emotionally disturbed children were placed in private schools on the recommendation of independent psychiatrists, but the children received no special medical treatment for their emotional problems while attending the schools. (H. Grant Atkinson, Jr., 44 T.C. 39; Edward S. Enck, T.C. Memo., Mar. 27, 1957.) Deduction of tuition expenses was also denied where the principal reason for enrolling a blind child in a private school was to provide him with a more challenging educational environment, rather than to treat his blindness. (Arnold P. Grunwald, supra.)

The evidence in the instant case indicates that appellants' boys were originally sent to Eldorado School for the Gifted Child because they were extremely bright and were inadequately challenged by the public schools. They did not suffer from any severe emotional disturbances at the time they entered Eldorado, but appellants feared that their continuation in public schools might lead to emotional difficulties in the future. The weight to be given Dr. Ludwick's statement regarding the psychiatric necessity of the Dodge boys' attending Eldorado is lessened somewhat by her close association with the school as its director. Even if that association did not exist, however, Dr. Ludwick's statement does not in itself establish that the boys were emotionally disturbed, in the sense of any real mental illness, but only that they were very sensitive and were subjected to emotional trauma in the public schools. It was apparently not thought necessary for them to have a complete change of environment since they continued to live at home throughout

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1966. Furthermore It does not appear that Eldorado offered any special facilities for the treatment of emotionally disturbed children. There **is** no evidence that the **occasional conferences** which Dr. Ludwick held with the **boys were** anything more than the normal counseling services offered by most schools. Eldorado appears to be primarily an educational Institution, offering the **same** academic courses which would be taught in public school, albeit gearing them to exceptionally Intelligent **children.**

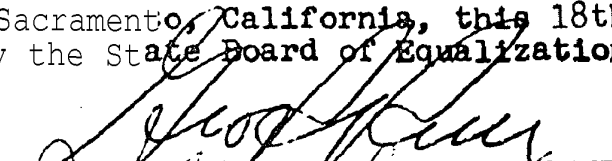
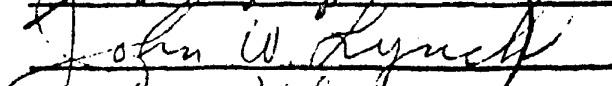


Upon review of the entire record and the principles set forth in the existing case law, we conclude that the cost of **sending appellants'** children to Eldorado in 1966 constituted a nondeductible personal, living or family **expense rather than an expenditure for medical care.** Respondent's position in **this matter must therefore be sustained.**

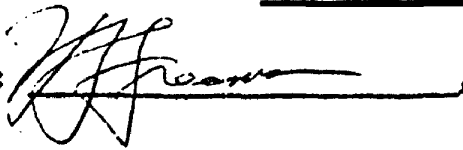
O R D E R

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 the **Franchise Tax Board** on the protest of Glenn T. and Stella Dodge against a proposed assessment of additional personal income tax **In the amount of \$85.71 for the year 1966, be and the same is hereby sustained.**

Done at Sacramento, California, this 18th day of February, 1970, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member

Attest:  Secretary