BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GLENN M. AND PHYLLIS R. PFAU)

For Appellants: Glenn M. Pfau, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Richard A. Watson
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 M. and Phyllis R. Pfau against a proposed assessment of additional personal income tax in the amount of $68.59 for the year 1966.

The question presented is whether appellants are entitled to a deduction for campaign expenses paid in connection with appellant Glenn M. Pfau's unsuccessful effort to be elected a judge of the Municipal Court of the Pasadena Judicial District.

During 1966 Glenn M. Pfau was court commissioner and judge pro tern. of the Superior Court of Los Angeles County. While on leave from that post, he campaigned for election to the judicial position mentioned above. In the course of the campaign, appellants spent $3,059.74 for such customary campaign expenses as newspaper advertising, printing, postage, office supplies, and rent. The funds for these expenditures came entirely from appellants' own personal resources and, in their joint personal income tax return for 1966, they claimed a deduction for the full amount of their campaign

expenditures. Respondent disallowed the deduction, and the resulting assessment of additional tax gave rise to this appeal.

The appellants contend that the campaign expenses were properly deductible under Revenue and Taxation Code section 17252, subdivision (a), which provides as follows:

> In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year--
>
> (a) For the production or collection of income;...

Since the office Mr. Pfau was seeking would have paid him income had he been elected, appellants argue that the cost of trying to get elected constituted ordinary and necessary expenses for the production of that income. Respondent's position is contained in regulation 17252, subdivision (f) of title 18 of the California Administrative Code, which specifically states:

> Among expenditures not allowable as deductions under Section 17252 are the following: ...campaign expenses of a candidate for public office, ...

Although the California courts and this board have not previously considered the deductibility of campaign expenditures, it is settled under the identical federal counterparts of the California statute and regulation here in question that such expenses are not deductible. (Int. Rev. Code of 1954, § 212 (1); Treas. Reg. § 1.212-1(f)*, McDonald v. Commissioner, 323 U.S. 57 [89 L. Ed. 68]; Mays v. Bowers, 201 F.2d 401; Campbell v. Davenport, 362 F.2d 624; Maness v. United States, 367 F.2d 357.) Where, as here, the state statute was copied from the federal statute, federal court decisions interpreting the federal statute are entitled to great weight in construing the state statute. (Meanley v. McColgan, 49 Cal. App. 2d 203, 209 [121 P.2d 45]; see also Rihn v. Franchise Tax Board, 131 Cal. App. 2d 356, 360 [280 P.2d 893].) The federal decisions are not conclusive of the matter, however, and the appellants ask that we allow the deduction on the basis of the position expressed by Justice

Black for the four dissenters in McDonald, supra. It may be admitted that the close division of the Court in McDonald shows that the deductibility of campaign expenditures is a matter about which reasonable men may differ. Nevertheless, the position of the majority denying deductibility has withstood the test of time in both the courts and Congress. Moreover, the construction placed on our statute by regulation 17252, subdivision (f), has received implicit legislative approval by virtue of the reenactment of section 17252 in 1953, without change and subsequent to respondent's promulgation of regulation 17252, subdivision (f)'s predecessor regulation, which contained virtually identical language relating to campaign expenses. (See Universal Engineering Co. v. State Board of Equaiization, 118 Cal. App. 2d 36 [256 P.2d 1059].) Under the circumstances, we believe we should follow McDonald and the long-standing administrative position denying a deduction for campaign expenditures.

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 M. and Phyllis R. Pfau against a proposed assessment of additional personal income tax in the amount of $68.59 for the year 1966, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of July, 1972, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Secretary