BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ERNEST F. AND EDNA K. POLK)

For Appellants: Ernest F. Polk, in pro. per.

For Respondent: Mark McEvilly
Counsel

O P I N I O N

This appeal *is* made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Ernest F. and Edna K. Polk against proposed assessments of additional Personal income tax in the amounts of $48.33 and $292.32 for the years 1975 and 1976, respectively.

In 1975 and 1976, appellants filed timely California personal income tax returns. On their 1975 return, appellants claimed itemized deductions totaling $4,803.00 of which $1,028.00 was claimed as charitable contributions. On their 1976 return, appellants claimed itemized deductions totaling $10,070.00, of which $1,038.00 was claimed as charitable contributions and $5,108.00 was claimed as a medical expense. Respondent audited appellants' 1975 and 1976 returns and disallowed, as unsubstantiated, $778.00 of the claimed $1,028.00 charitable contribution for year 1975. For year 1976, respondent disallowed $986.00 of the claimed $1,038.00 expense for charitable contribution and also disallowed $4,114.00 of the claimed medical expense deduction of $5,108.00. The medical expense involved was for installation of a central air-conditioning and heating unit prescribed by a physician to help relieve appellants': son of an asthmatic condition.

Whether respondent properly disallowed these deductions is the question presented for our determination.

Respondent's disallowance of the major portion of the medical expense deduction was based on its claim that appellants failed to demonstrate what portion Of the total cost of the expense was allowable as a deduction. The provisions of section 213 of the Internal Revenue Code and section 17253 of the Revenue and Taxation Code are substantially identical with respect to the medical expense deduction. Therefore, the federal regulations interpreting Internal Revenue Code section 213, are applicable to this case. Federal regulation section 1.213-1(e)(iii) provides that a capital expenditure may "qualify as a medical expense to the extent that the expenditure exceeds the increase in the value of the related property ...." When appellants were requested by respondent, in accordance with the stated provision, to provide information demonstrating the allowable portion of the air-conditioning unit's cost, appellants refused. Respondent, thereafter, used figures obtained from the county assessor's office to calculate the allowable portion by determining the increase in property value due to the installation and substituting such increase from the claimed unit's cost.

Appellants contend that the assessor's office had not increased the assessed valuation of the property due to the installation of the air-conditioning and heating unit. However, they have failed to substantiate this claim. It is well settled that deductions are a

matter of legislative grace, and the burden of proving the right to them is upon the taxpayer. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348] (1934); Deputy v. du Pont, 308 U.S. 488 [84 L. Ed. 416] (1940); Appeal of James M. Denny, Cal. St. Bd. of Equal., May 17, 1962.) By not substantiating their business expense deductions, appellants failed to carry their burden of proof and, consequently, were properly denied the benefit of those deductions.

With respect to the charitable contributions deductions, appellants were credited with $250.00 of the claimed $1,028.00 charitable contribution for year 1975 for which they were able to substantiate by proof of a church receipt. The $778.00 of the remaining claimed charitable deduction for 1975, as well as the unsubstantiated contribution deduction for year 1976 was properly disallowed by respondent in view of the fact that appellants had not met the burden of proving their entitlement.

Based upon the foregoing, we must sustain respondent's determination regarding the deductions in question.

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,

Appeal of Ernest F. and Edna K. Polk

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 Ernest F. and Edna K. Polk against proposed assessments of additional personal income tax in the amounts of $48.33 and $292.32 for the years 1975 and 1976, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of April, 1980, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member