BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
GILBERT W. JANKE)

For Appellant: Gilbert W. Janke, in pro. per.

For Respondent: Mark McEvilly
Counsel

O P I N I O N

These appeals are made pursuant to section 18.593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Gilbert W. Janke against proposed assessments of additional personal income tax in the amounts of $552.31 and $101.89 for the years 1976 and 1977, respectively.

The issue presented is whether appellant has established that he is entitled to certain itemized deductions claimed for the years in question.

Appellant timely filed returns for the years 1976 and 1977 in which he itemized numerous deductions from adjusted qross income. Among those claimed on the 1976 return were amounts paid for: (1) 1973 federal income tax liability ($1,836.00); (2) 1973 through 1975 California personal income tax assessments ($1,852.00); (3) premiums for life insurance ($936.00); and (4) home improvements ($2,719.00). Among those claimed on the 1977 return were amounts paid for: (1) military clubs dues ($150.00); (2) automobile club dues ($65.00); and (3) home improvements ($408.00). Respondent's disallowance of the deductions is the subject of these appeals.

It is well established that deductions are a matter of legislative grace. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348] (1934).) Moreover, respondent's determination that a particular deduction should be disallowed is presumed correct and, consequently, the appellant must prove his entitlement thereto. (Appeal of Robert V. Erilane, Cal. St. Bd. of Equal., Nov. 12, 1974: Appeal of James M. Denny, Cal. St. Bd. of Equal., Mav 17, 1962.) The burden of proof is not overcome by an appellant's unsupported allegations. (Appeal of Robert C. and Irene Sherwood, Cal. St. Bd. of Equal., Nov. 30, 1965.)

With this background, we now discuss the individual items, Section 17204 of the Revenue and Taxation Code provides, in pertinent part:

> (c) No deduction shall be allowed for the following taxes:
>
> (1) Taxes paid or accrued to the state under this part [the Personal Income Tax Law];
>
> (2) Taxes on or according to or measured by income or profits paid or accrued within the taxable vear imposed bv the authoritv of:
>
> (A) The government of the United States . . . ;
>
> (B) Any state, ...;
>
> (C) Taxes imposed by authority of the qovernment of the United States include--

* * *

(iii) The tax withheld on wages under Section 3402 of the Internal Revenue Code of 1954. (Emphasis added.)

Pursuant to the above statutory provisions, respondent properlv disallowed appellant's deduction, of federal and state income taxes because the taxes paid were income taxes imposed by the United States and the State of California. (See also, Appeal of Mil and Olive Schluter, Cal. St. Bd. of Equal., Jan. 11, 1978; Appeal of Elsie Z. Rradberry, Cal. St. Bd. of Equal., April 5, 1976.) In support of the deduction for the California personal income taxes paid, appellant states that it was taken for taxes paid under protest for which claims for refund were filed. This arqument simply is not relevant since no deduction is allowed for such taxes paid, whether or not pavment is accompanied by a claim for refund.

Appellant maintains that the deduction for federal taxes paid should be allowed because it represented amounts withheld from payments to him, and the withheld amounts thereby "reduced" his income for state income tax purposes. We previously rejected this argument in Schluter, supra, where we explained that if sums withheld are for pavment of income taxes, the discharge of tax liability through the withholding of such amounts results in a benefit to the taxpayer constituting gross income.

The disallowance of the deduction for life insurance premiums also constituted proper action. The deduction was shown on the 1976 return as, "Divorce (Wife Life Insurance Premiums)." Appellant claims that under federal law, these life insurance premiums paid on his ex-wife's life insurance policy are deductible. Section 17263 of the Revenue and Taxation Code does allow a husband who is divorced or separated from his wife to deduct periodic support payments, if they are includible in the wife's gross income pursuant to section 17081. Section 171381 provides, in pertinent part:

(a) If under a decree of dissolution or of separate maintenance, one spouse is to make periodic payments to the other spouse, the gross income of the spouse receiving such payment shall include such payments (whether or not made at regular intervals) received after such decree in discharge of (or attributable to property transferred, in trust or otherwise,

> in discharge of) a legal obligation which, because of the marital or family relationship, is imposed on or incurred by the other spouse under the decree or under a written instrument incident to such divorce or separation.
>
> (b) If the spouses are separated, and there is a written separation aqreement executed after August 16, 1954, the gross income of the spouse receiving payment under the decree shall include periodic payments (whether or not made at regular intervals) received after such aqreement is executed which are made under such aqreement and because of the marital or family relationship (or which are attributable to property transferred, in trust or otherwise, under such aqreement and because of such relationship). This subsection shall not apply if the husband and wife make a single return jointly.

These California statutory provisions are based upon substantially identical sections of federal law. (Int. Rev. Code of 1954, §§ 215(a), 71(a) (1) & (2).) Therefore, federal court decisions interpreting these federal statutes are entitled to great weight in construinq the state provisions. (Meanley v. McColgan, 49 Cal. App. 2d 203 [121 P.2d 45] (1942); Appeal of Mary Frances Sayer, Cal. St. Bd. of Equal., Oct. 27, 1971.) Appellant, however, has misconstrued the applicable federal law and, consequently, the applicable state law. Pursuant to the above provisions, a taxpayer is entitled to deduct, as alimony, premium payments on a life insurance policy insuring the taxpayer under certain conditions. First, the spouse receiving the alimony must have been made absolute owner and irrevocable beneficiary of the policy. (See Stevens v. Commissioner, 439 F.2d 69 (2nd Cir. 1971); &de v. Commissioner, 301 F.2d 279 (2nd Cir. 1962).)

Second, the spouse's economic benefit must be ascertainable; the beneficial rights to income from the policy must be more than a matter of conjecture. (See Cosman v. United States, 440 F.2d 1017 (Ct. Cl. 1971).)

Third, the life insurance premium payments must be made pursuant to a court decree or written agreement, in discharge of the payor's obligation to support his spouse after separation or dissolution. (See Stevens v. Commissioner, supra.) Appellant has not placed into the record of this appeal any evidence that the premiums were paid under circumstances. where these three conditions were satisfied.

We also conclude that the deductions for home improvements were properly disallowed. Appellant asserts that these expenditures were the result of a court order compelling him to add certain home improvements to maintain his home in salable condition because of the possibility of such sale, inasmuch as his home was involved in a possible community property settlement between himself and his ex-wife. Pursuant to the property settlement agreement, appellant acquired sole ownership of the former family home and, apparently in exchange, his wife received a promissory note secured by a deed of trust on that property. Even assuming that appellant's unsubstantiated assertion is true, he has still failed to demonstrate that the home improvement expenditures were anything other than nondeductible personal expenses or nondeductible capital expenditures. (See Rev. & Tax. Code, §§ 17282, 17283.) The fact that a court may have compelled him to make such expenditures does not alter their nondeductible classification for tax purposes, inasmuch as they would still have the effect of maintaining or improving his own home.

We also find that the deductions for military clubs dues and automobile club dues have not been substantiated. Appellant is a retired Marine Corpsman. Appellant concludes that this establishes him as a professional military person, and that the dues to military clubs are valid deductions to professional clubs. As a retired military person, appellant has simply not established that the dues he has paid to such clubs were anything other than nondeductible personal expenses. Appellant has not shown that the expense was pertaining to the carrying on of a trade or business. (See Rev. Rul. 55-250, 1955-1 Cum. Bull. 270.) Furthermore, he has not established the purpose of the military club or clubs to which he paid the dues.

Moreover, while appellant maintains that the automobile club dues are deductible as "listed in my income tax books as fully allowable", he has not shown under what section or sections of the law such dues are deductible. In the absence of a showing that the vehicle or vehicles were used in carrying on a trade or business or in an activity entered into for profit, such dues would constitute nondeductible personal expenditures. (Cf. Rev. & Tax. Code, §§ 17202 and 17252 with 17282.)

For the foregoing reasons, we must sustain respondent's action.

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 Gilbert W. Janke against proposed assessments of additional personal income tax in the amounts of $552.31 and $101.89 for the years 1976 and 1977, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of May, 1980, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member