BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GUY E. AND DOROTHY HATFIELD)

Appearances:

For Appellants: Alan Masters
Certified Public Accountant

For Respondent: Robert L. Koehler
Counsel

O P I N I ON

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 Guy E. and Dorothy Hatfield against a proposed assessment of additional personal income tax in the amount of $626.71 for the year 1973.

The issue presented is whether appellants were entitled to the deductions claimed under the relevant statutes.

Appellants filed a joint California personal income tax return for the year 1973, claiming deductions for certain charitable contributions, a loss incurred in training and showing horses, and appellant Guy Hatfield's alleged share of a partnership net operating loss.

Charitable contributions, characterized as "horse show entry fees" were deducted in the amount of $1,568.50. Cancelled checks totaling $1,050.70 were offered as partial substantiation of this deduction. Only a few of the recipient organizations were qualified charitable organizations in 1973 under Internal Revenue Code 170(c) or Revenue and Taxation Code section 17214. Appellant now contends that only fees paid to those qualified organizations, plus fees paid for two other shows which benefited other organizations, are deductible as charitable contributions. The amount now claimed by appellant as a charitable contribution is $578.70. Respondent's position is that none of the payments were charitable contributions since they were made for the right to participate in the horse shows. Appellant claims the remainder of the horse show entry fees as additional business expense deductions for Hatfield Farms.

Appellants originally claimed business expense deductions in the amount of $10,121.20 in connection with Hatfield Farms. Hatfield Farms was the name appellants used in connection with their activities of training and showing horses. Since they had no gross income from this activity, the entire $10,121.20 was deducted as a loss. Cancelled personal checks and Master Charge receipts were submitted to substantiate expenditures of $6,911.80. Respondent contends that the expenses and resultant-loss are not deductible since appellants have not shown that they were engaged in a trade or business.

The $9,217.50 claimed as appellant Guy Hatfield's share of a partnership's 1973 net operating loss was challenged by respondent because there was no showing that Mr. Hatfield had any interest in a partnership during 1973.

Revenue and Taxation Code section 17214 allows a deduction for contributions or gifts to or for the use of certain charitable organizations or political entities. In this regard, the section is the same as the provisions of Internal Revenue Code section 170. For that reason, the construction given the federal statute is very persuasive in interpreting the California statute. (Holmes v. McColgan, 17 Cal. 2d 426 [110 P.2d 428] (1944).)

Appellants do not deny that the payments in question were fees paid for the privilege of participating in the shows, but contend that since they were payments made to or for the use of charitable organizations, they are deductible. A payment, even though made to a qualified charitable organization, is not a "contribution or gift" for purposes of Internal Revenue Code section 170 where it is made in order to receive some benefit in return. (Sedum v. United States, 518 F.2d 242, 245 (7th Cir. 1975); Haak v. United States, 451 F. Supp. 1087, 1092 (W.D.Mich. 1978).) Here appellants expected to, and did receive, a benefit in return for their payments. Appellants have not shown that the payments made exceeded the value of the benefits they received, so no portion of the entry fees is deductible as a charitable contribution. (See Rev. Rul. 67-246, 1967-2 Cum. Bull. 104.)

Appellants claim expenditures they made relating to their training and showing of horses were expenses paid in connection with a trade or business, which are deductible under Revenue and Taxation Code section 17202. Respondent contends that appellants' activities did not constitute a trade or business, but were activities not engaged in for profit as defined by Revenue and Taxation Code section 17233. Expenses in connection with an activity not engaged in for profit are not deductible, except in certain limited situations which are not applicable here. The two sections cited above are interrelated, section 17233 defining an activity not engaged in for profit as "any activity other than one with respect to which deductions are allowable for the taxable year under Section 17202 or under subdivision (a) or (b) of Section 17252" (dealing with expenses for production or collection of income).

We note that Revenue and Taxation Code sections 17202 and 17233 and the regulations thereunder are based on Internal Revenue Code (I.R.C.) sections 162 and 183, respectively, and their regulations. Therefore, it

is appropriate to consider the federal case law construing I.R.C. sections 162 and 183 as very persuasive in the interpretation and application of the corresponding California sections. (Holmes v. McColgan, supra.)

In Stanley A., Golanty, 72 T.C. 411 (1979) (app. pending, 9th Cir.), the basis for determining the "trade or business" issue. is summarized as follows:

> The test for determining whether an individual is carrying on a trade or business so that his expenses are deductible under section 162 is whether the individual's primary purpose and intention in engaging in the activity is to make a profit. [Citations.] The taxpayer's expectation of profit need not be a reasonable one: it is sufficient if the taxpayer has a bona fide expectation of realizing a profit, regardless of the reasonableness of such expectation. [Citations.] The issue of whether a taxpayer engages in an activity with the requisite intention of making a profit is one of fact to be resolved on the basis of all the surrounding facts and circumstances of the case [Citations.], and the burden of proving the requisite intention is on the petitioners. [Citations.] (pp. 425-426.)

The regulations under section 17233 state that in determining whether an activity is engaged in for profit, greater weight is given to objective facts than to the taxpayer's mere statement of the taxpayer's intent. (Cal. Admin. Code, tit. 18, reg. 17233(b), subd. (a).) Some of the relevant factors to be taken into account are also listed, such as whether the activity is carried out in a businesslike manner, the taxpayer's knowledge and expertise, the time and effort expended on the activity, the income and loss history of the activity, the financial status of the taxpayer, and the elements of personal pleasure and recreation involved. (Cal. Admin. Code, supra, subd. (b).)

We are presented with few facts upon which to base our decision; Beyond their assertions- that the activities were a business entered into for profit, appellants state only that they set up a separate business bank account, they increased their gross receipts from the activities from zero in 1973 to $7,200 in 1974, and they terminated the activities' in 1975 when it was

apparent that they could not make a profit. Respondent states, and appellants do not deny, that Mrs. Hatfield was an avid horse enthusiast.

No information is provided regarding appellants' expertise in training and showing horses or how much time was devoted to the activities. Appellants' inability to produce adequate substantiation of expenses and their apparent lack of systematic bookkeeping procedures suggest that the activities were not conducted in a businesslike manner. Mrs. Hatfield was very interested in horses, and appellants apparently owned several horses already. This indicates that personal recreation was involved in their activities. Not only did they have no net income from their training and showing in 1973, but they had no receipts whatsoever, although they indicate that they entered no less than 17 horse shows in that year. The fact that Mr. Hatfield had substantial income from other sources and received considerable tax benefits from the expense deductions may also indicate a lack of profit motive.

Appellants assert that their substantial increase in gross receipts in 1974 and the subsequent termination of their operation in 1975 after two years of net loss indicate that they intended to make a profit. These circumstances, however, are as consonant with a recreational activity as with one entered into for profit. The scant facts presented, taken as a whole, do not establish that the activity was a business engaged in for profit. Therefore, we find that appellants are not entitled to a business expense deduction for their expenditures made in connection with their horse raising and showing activities. For the same reason, the horse show entry fees which appellant now claims as business expenses are not deductible.

In support of Mr. Hatfield's claimed share of a partnership loss for 1973, appellants have submitted copies of the first and last pages of a lease, a property tax bill, several cancelled checks and representations by two individuals that they were paid or reimbursed by Mr. Hatfield. Appellants assert that these show the existence of a partnership and substantiate Mr. Hatfield's share of that partnership's expenses, which are deductible by him as business expenses.

It is well established that the taxpayer bears the burden of proving clear entitlement to a deduction. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.

Ed. 1348] (1934): Appeal of Otto L. Schirmer, Cal. St. Rd. of Equal., Nov. 19, 1975.) On the record before us, we cannot say that such a partnership existed. Even if appellant's evidence showed the existence of a partnership, no proof has been submitted to show the amount of the net partnership loss or Mr. Hatfield's adjusted basis in the partnership, two elements essential to determining the loss deduction available to a partner. (Rev. & Tax. Code, §§ 17852 and 17855-17859.) Appellants have not met their burden of proof entitling them to the partnership loss deduction.

For the reasons stated above, respondent's actions on the above matters must 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 Guy E. and Dorothy Hatfield. against a proposed assessment of additional personal income tax in the amount of $626.71 for the year 1973, be and the same is hereby sustained.,

'Done at Sacramento, California, this 1st day of August , 1980, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member