BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JOHN A. AND JULIE M. RICHARDSON)

For Appellants: George W. Kell
Attorney at Law

For Respondent: Jon Jensen
Counsel

OPINION

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 John A. and Julie M. Richardson against a proposed assessment of additional personal income tax and penalty in the total amount of $55,935.13 for the year 1974.

Appellant John A. Richardson is a physician. In 1974, his reported gross income from his medical practice was $783,817. From that amount he deducted business expenses for the year totaling $610,836, resulting in a net business income of $172,981.

In the joint California personal tax return which they filed for 1974, appellants reported taxable income of $124,902. Asserting that Federal Reserve notes were only worth .20 silver dollars, appellants discounted their reported dollar income by 80 percent and paid the tax due on the reduced amount. Respondent recomputed appellants tax liability for 1974 on the basis of the entire reported taxable income for that year ($124,902) and issued a notice of proposed assessment of the resulting additional tax. Appellants did not protest that assessment and in due course it became final.

Upon further examination of appellants' 1974 return and the "Income from Profession" schedule which was attached, respondent noted one expense item labeled "Vitamin Purchases" in the amount of $406,801. Respondent requested that appellants submit copies of receipts, purchase contracts and cancelled checks to substantiate the claimed vitamin expense. When appellants failed to respond to that request, respondent issued a notice of proposed assessment based upon its disallowance of the entire vitamin expense deduction. Respondent also added a 25 percent penalty for failure to furnish information requested, pursuant to section 18683 of the Revenue and Taxation Code.

Appellants protested the above assessment, stating in their protest letter only that "Laetrile is deductable [sic]." They cited Revenue Ruling 78-325 [1978-2 Cum. Bull. 124] in support of their position. Respondent's eventual affirmation of the proposed assessment gave rise to this appeal. The sole issue presented for our decision is whether appellants have substantiated the deductibility from Dr. Richardson's 1974 business income of a $406,801 vitamin and/or laetrile expense.

It is well settled that income tax deductions are a matter of legislative grace, and the burden is on the taxpayer to show by competent evidence that he is entitled to the deductions claimed. (See Deputy v. du Pont, 308 U.S. 488 [84 L.Ed. 4161 (1940); New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed.

1348] (1934); Appeal of James C. and Monablanche A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975.) It is equally well settled that respondent's determination that a deduction should be disallowed is presumed correct and the taxpayer has the burden of showing error in that determination. (Appeal of Peter F. and Betty H. Eastman, Cal. St. Bd. of Equal., May 4, 1978; Appeal of Robert V. Erilane, Cal. St. Bd. of Equal., Nov. 12, 1974.)

Appellants herein have made no effort to substantiate the business expense deduction in question. First, they have failed to clarify the exact nature of the expenditures which supposedly totaled $406,801 in 1974. In their 1974 return, those expenses were identified as having been for vitamin purchases; at the protest and appeal levels, appellants have contended the alleged expenditures were for laetrile dispensed to patients by Dr. Richardson during that year. Secondly, despite having been given ample opportunity to do so, appellants have submitted no documentary proof of those expenditures, such as cancelled checks, purchase orders or receipts. Their own unsupported assertions that such expenses were incurred by Dr. Richardson in his medical practice are insufficient to satisfy their burden of proving they were entitled to the $406,801 deduction claimed. (See Appeal of Peter F. and Betty H. Eastman, supra; Appeal of Nake M. Kamrany, Cal. St. Bd. of Equal., Feb. 15, 1972.)

Finally, appellants' reliance on Revenue Ruling 78-325, supra, is totally misplaced. The Internal Revenue Service there held that a taxpayer who purchased and used laetrile, as prescribed by his physician, in a locality where the sale and use of that drug was legal, was entitled to deduct amounts which he paid for the laetrile as a medical expense, subject to the limitations provided in section 213 of the Internal Revenue Code. That ruling obviously is of no assistance to appellants in this case.

On the record before us, we must conclude that appellants have failed to carry their burden of proving they were entitled to the $406,801 business expense deduction claimed for 1974. Nor have they shown any error in respondent's disallowance of that deduction in its entirety. It further appears that respondent's imposition of a penalty for failure to file requested information was fully justified. Accordingly, respondent's action in this matter will be sustained.

ORDER

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 John A. and Julie M. Richardson against a proposed assessment of additional personal income tax and penalty in the total amount of $55,935.13 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of October, 1980, by the State Board of Equalization, with Members Nevins, Reilly, Dronenburg and Bennett present.

Richard Nevins , Chairman

George R. Reilly , Member

Ernest J. Dronenburg, Jr. , Member

William M. Bennett , Member

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