



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GEORGE D. AND MARIANNE E. PAUL)

For Appellants: George D. Paul,
 in pro. per;

For Respondent: Michael E. **Brownell**
 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 George D. and Marianne E. Paul against a proposed assessment of additional personal income tax in the amount of \$412.05 for the year 1977.

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The issue is whether appellants are entitled to a deduction for moving expenses.

On their 1977 tax return, appellants claimed a deduction for moving expenses incurred in their move from Vermont to California in the amount of **\$4,871.00**.

Respondent disallowed the deduction pursuant to Revenue and Taxation Code section **17266** since appellants moved to California from outside the state and did not receive reimbursement for the moving expenses **includible** in their California gross income.

Appellants protested the additional tax on the basis that they had incurred the expenses and that these expenses had been reimbursed from the gain on the sale of income producing property in California. Appellants contend that since the proceeds from the sale of this rental property were included in gross income as capital gain at a time when appellant-husband was self-employed and since such proceeds were used to pay the expenses of appellants' move, such payment constitutes reimbursement for purposes of section 17266.

Section 17266 of the Revenue and Taxation Code allows a taxpayer to deduct certain moving expenses. The deduction is limited, however, in cases where individuals move into or out of California. That limitation is contained in subdivision (d) of section 17266, which provides in relevant part:

In the case of an individual whose former residence was outside this state and his new place of residence is located within this state ... the deduction allowed by this -section shall be allowed only if any amount received as payment for or reimbursement of expenses of moving from one residence **to** another residence is includable in gross income as provided by Section 17122.5 and the amount of deduction shall be limited only to the amount of such payment or reimbursement or the amounts specified in subdivision (b), whichever amount is the lesser.

Section 17122.5, Revenue and Taxation Code, reads as follows:

There shall be included in gross income (as compensation for services) any amount

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received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment or self-employment.

In a number of prior appeals we have held that a taxpayer moving into or out of California, and receiving no reimbursement of his moving expenses, is not entitled to any deduction under the above quoted limitation of section **17266**. (Appeal of Chris T. and Irene A. Catalone, Cal. St. Bd. of Equal., June 29, 1978; Appeal of James G. Evans, Cal. St. Bd. of Equal., Dec. 6, 1977; Appeal of Norman L. and Penelope A. Sakamoto, Cal. St. Bd. of Equal., May 10, 1977.) Here, appellants contend that they did indeed receive reimbursement for their moving expenses in that the proceeds from the sale of their rental property represent "payment for or reimbursement of expenses of moving" and thus, the requirements of section 17266 are met. Appellants are incorrect in this contention. The proceeds of the sale do not represent "payment for or reimbursement of expenses of moving" since they would have been receivable whether or not appellants had actually moved to a new residence. Furthermore, and more to the point, the language of section 17266 clearly states that the income in question must be taxable only under the provisions of section 17122.5. Since the funds in question were derived from gain on the sale of a capital asset, they are subject to tax under the provisions of Revenue and Taxation Code sections 18181, 18212-18218, and 18161 et seq.; not section 17122.5. Consequently, the provisions of section 17266 are not satisfied. On the basis of the foregoing, the action of respondent in this matter must be sustained.

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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 George D. and Marianne-E. Paul against a proposed assessment of additional personal income tax in the amount of \$412.05 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day Of September, 1981, by the State Board of Equalization, with Board **Members** Mr. Dronenburg, Mr. Reilly and **Mr.** Nevins present.

Ernest J. Dronenburg, Jr., Chairman

George R. Reilly, Member

Richard Nevins, Member

_____, Member

_____, Member