BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
HENRY G. AND DOROTHY L. MORLAND)

For Appellants: Henry G. Morland
in pro. per,

For Respondent: Kathleen M. Morris
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 Henry G. and Dorothy L. Morland against a proposed assessment of additional personal income tax in the amount of $319.01 for the year 1978.

At issue is the deductibility of expenses incurred by appellant-husbahd, Henry G. Morland, (hereinafter appellant) in maintaining a second residence.

Appellant is an employee of Rockwell International Corporation. On their 1978 personal income tax return, appellant and his wife deducted $4,978.91 for the maintenance of a second residence. Upon request by respondent for further information regarding the second residence, appellant responded that the residence was a rented apartment located within walking distance of his place of employment. Appellant stated that it was necessary for him to stay in the residence during weekdays because he had a heart condition which precluded him from continuing to commute from his permanent residence to work. Appellant concluded that the expense of maintaining this apartment qualified as a deduction under section 17202 of the Revenue and Taxation Code, which allows a deduction for ordinary and necessary traveling expenses. (Appellant's initial claim was mistakenly made under an inapplicable section of the Code.) Respondent disallowed the deduction and this appeal resulted.

Section 17202, subdivision (a)(2), of the Revenue and Taxation Code allows deductions for ordinary and necessary traveling expenses, including amounts expended for meals and lodging incurred while the taxpayer is "away from home in the pursuit of a trade or business." Furthermore, section 17282 specifically states that personal, living or family expenses are nondeductible. These two sections are substantially the same as sections 162(a)(2) and 262, respectively, of the Internal Revenue Code of 1954. Consequently, federal court decisions interpreting the federal statutes are entitled to great weight in construing the state statutes. (Meanley v. McColgan, 49 Cal.App.2d 203 [121 P.2d 45] (1942); Appeal of Glenn M. and Phyllis R. Pfau, Cal. St. Bd. of Equal., July 31, 1972.)

One of the federal interpretations of section 162(a)(2) is that a deduction thereunder is allowed only if the following three conditions are met: (1) The expenses must have been ordinary and necessary: (2) the expenses must have been incurred while petitioner was "away from home;" and (3) the expenses must have been incurred by petitioner in the pursuit of business. (Commissioner v. Flowers, 326 U.S. 465 [90 L.Ed. 2031 (1946).) The deduction claimed by appellant fails to satisfy these requirements.

Appellant has first failed to show that maintenance of the apartment was an ordinary and necessary business expense. Appellant's case is not unlike that presented in Robert A. Coerver, 36 T.C. 252(1961), wherein the taxpayer wife maintained an apartment in New York City in order to be closer to her place of employment. Since taxpayers' home was located in Wilmington, Delaware, the U.S. Tax Court concluded that-the taxpayers' expenses for maintaining the Mew York apartment were not ordinary and necessary business expenses. The court further reasoned that these expenses were incurred for purely personal reasons and were prohibited from being deductible by the explicit terms of Internal Revenue Code Section 262 as nondeductible personal expenses. We conclude that a similar analysis and conclusion applies to appellant's situation.

Secondly, appellant has failed to show that the expenses involved were incurred while he was "away from home." As used in section 162(a)(2), the word "home" refers to an individual's tax home, and it has consistently been held that a taxpayer's tax home is where his principal place of employment is located. It is not where his personal residence is located, if such residence is located in a different place. (Ronald D. Kroll, 49 T.C. 557, 561-562.(1968); Lee E. Daly, 72 T.C. 190, 195 (1979).) The only exception would be a situation wherein the employment was temporary in nature, which is not the case here. Consequently, for purposes of section 162(a)(2), Rockwell International Corporation was appellant's tax home. Since appellant's costs for the maintenance of his apartment were incurred while he was at Rockwell International Corporation, such costs were not incurred "away from home." Therefore, the second requirement is not satisfied. (See Walter K. Liang, ¶ 75,297 P-H Memo. T.C. (1975).)

Lastly, appellant fails to meet the requirement that the expenses have been incurred in the pursuit of business or because of business necessity. Here there is no indication that appellant's employer required him to move. Also, although appellant contends that the move was made because of his poor medical condition, he was physically able to work. Therefore, any accommodations which he elected to make in order to maintain his health were a matter of his own choice and desire, and well within the realm of "personal convenience." We conclude it was reasonable to expect appellant to have moved his permanent residence to the vicinity of his employment site if he thought that

Commuting was no longer poss'ible due to his heart condition. Appellants' failure to do so was motivated by personal considerations, thereby precluding the travel expense deduction.

For the reasons stated above, respondent's action in this matter must be sustained.

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ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition filed November 26, 1981, by Henry G. and Dorothy L. Morland for rehearing of their appeal from the action of the Franchise Tax Board, we are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is hereby ordered that the petition be and the same is hereby denied and that our order of October 27, 1981, be and the same is hereby affirmed.

Done at Sacramento, California, this 1st day of February, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

William M. Bennett, Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member

Appeal of Henry G. and Dorothy L. Morland

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 Henry G. and Dorothy L. Morland against a proposed assessment of additional personal income tax in the amount of $319.01 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of October , 1981, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Bennett and Mr. Nevins present.

Ernest J. Dronenburg, Jr. , Chairman

William M. Bennett Member

Richard Nevins Member

, Member

Member