



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SUNDARAM AND HEMAVATHY SUBRAMANIAN)

Appearances:

For Appellants: Sundaram Subramanian,
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 Sundaram and Hemavathy Subramanian against a proposed assessment of additional personal income tax in the amount of \$318.24 for the year 1977.

Appeal of Sundaram and Hcmavathy Subramanian

The issue presented by this appeal is whether appellants were entitled to a moving expense deduction.

On their 1977 nonresident joint personal income tax return, appellants claimed a deduction of **\$4,745.00** for expenses incurred in their move from Illinois to California. They reported no employer reimbursement of this amount on their return. Respondent disallowed the deduction and issued a **proposed** assessment. After appellants' protest and a hearing on that protest, respondent affirmed its proposed assessment and appellants filed this timely appeal.

Respondent's denial of the moving expense deduction was pursuant to section 17266, subdivision (d), of the Revenue and Taxation Code, 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.

Since appellants received no reimbursement from an employer for their moving expenses and their move was from out-of-state into California, section 17266 clearly applies and prohibits a deduction for moving expenses. Appellants apparently do not contest this conclusion, but contend that the statute is unconstitutionally discriminatory.

This board has a long-standing policy of not deciding **constitutional** questions in appeals from deficiency assessments; Additionally, Article III, section 3.5, of the California Constitution prohibits any administrative agency from declaring unconstitutional, or refusing to enforce, any statute unless an **appellate** court has made a determination that such statute is unconstitutional. Appellants' constitutional arguments are, therefore, 'directed' to the wrong forum.

Appeal of Sundaram and Hemavathy Subramanian

For the reasons stated above, we sustain the action of the Franchise Tax Board in denying appellants' claimed moving expense deduction.

Appeal of Sundaram and Hemavathy Subramanian

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 Sundaram and Hemavathy Subramanian against a proposed assessment of additional personal income tax in the amount of \$318.24 for the year 1977, be and the same is hereby sustained..

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