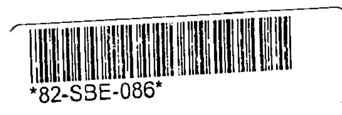
82-SBE-086

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the hatter of the Appeal of)
)
DE VAUGHN C. LEE)

Appearances:

For Appellant: De Vaughn C. Lee, in pro, per.

For Respondent: John R. Akin 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 De Vaughn C. Lee against a proposed assessment of additional personal income tax in the amount of $134.37 for the year 1976.

Appellant's '5976 federal income tax return was audited by the Internal Revenue Service in 1979. 'While the federal audit resulted in the disallowance of a claimed deduction for private school tuition, appellant was allowed child care and general tax credits which he had neglected to claim, The allowance of those tax credits more than offset the increased tax liability which followed from the disallowance of tbe claimed deduction for private school tuition, thereby resulting in a refund to appellant for overpayment of his federal income tax liability,

In basing the subject proposed assessment upon the federal audit, respondent incorporated the federal adjustments to the extent applicable under California law, Accordingly, while it disallowed the claimed deduction for private school tuition, respondent did not allow appellant the child care or general tax credits permitted by the federal authorities because California law did not provide for identical credits during the year in issue. Arguing that it was unfair to only partially reflect the federal audit changes, appellant protested respondent's action. Upon review of appellant's protest, respondent affirmed its action, thereby resulting in this appeal,

The issues presented by this appeal are: (i) whether respondent, by following federal audit adjustments to the extent applicable under California law for the appeal year, properly determined appellant's additional state income tax liability; and (ii) whether appellant has established that any portion of the amount paid for private school tuition constituted a-deductible employment-related expense under former Revenue and Taxation Code section 17262.

Appellant contends that he will be subjected to inequitable treatment if this board sustains respondent's action on appeal. In essence, appellant contends that adverse federal income tax consequences were avoided by virtue of the allowance of the child care and general tax credits he had neglected to claim on his federal return. Thus, he apparently concludes, an inconsistent and inequitable result will occur if federal law is not applied for state income tax purposes,

Section 44A of the Internal Revenue Code provides for a tax credit equal to 20 percent of the employment related expenses for the care of qualifying individuals up to a maximum credit of $400 for one

qualifying individual or $800 for two or more qualifying individuals. The California counterpart to this federal provision, section 17052.6 of the Revenue and Taxation Code, was enacted by the California Legislature in 1977, operative for taxable years subsequent to the year in issue, (Stats. 4977, Ch. 1079.) For tax years ending in 1976 through 1978, former section 42 of the Internal Revenue Code allowed individual taxpayers a general tax credit equal on an annual basis to the greater of either two percent of taxable income up to $9,000, or $35 for each personal exemption they could claim. (See former Treas. Reg. § 1.42A-1.) A California counterpart to this latter federal provision was never enacted.

It is well established that a deficiency assessment issued by respondent on the basis of a federal audit report is presumptively correct (see Rev. & Tax. Code, § 18451), and the taxpayer bears the burden of proving otherwise. (Appeal of Donald G. and Franceen Webb, Cal. St. Bd. of Equal., Aug. 19, 1975.) Appeal of Nicholas H. Obritsch, Cal. St, Bd. of Equal., Feb. 17, 1959.) In the instant appeal, respondent conformed with the final federal action for 1976 to the extent allowable under California law; the two federal credits described above were not allowed because corresponding California provisions were not in existence during the appeal year.

Although a substantial portion of California income tax law is based upon its federal counterpart, as previously noted, California's Personal Income Tax Law contained no provisions comparable to Internal Revenue Code sections 42 and 44A. Thus, appellant's argument can only be viewed as a plea to apply federal tax law to a set of circumstances with respect to which California law did not follow the federal statutes. Such a course of action would be beyond the authority of the board. Federal revenue provisions which have no counterpart in California law may not be applied in determining state income tax liability. (Appeal of John A. and Barbara J. Vertullo, Cal. St. Bd. of Equal., July 26, 1976; Appeal of Ralph D. and Lena C. Vaughn, Cal. St. Bd. of Equal., Oct. 17, 1973.)

At the time of the oral hearing on this matter, appellant advanced the contention that the amount paid for private school tuition in 1976 constituted child care expenses deductible under former Revenue and Taxation Code section 17262. During the year in issue, former section 17262 allowed a limited deduction for certain

"employment-related expenses," In the case of such expenses provided outside of the taxpayer's household, the deduction was limited to $225 a month for two qualifying individuals. The term "employment-related expenses" did not include educational expenses incurred for kindergarten or any higher level of education. (Former Rev. & Tax. Code, § 17262, subd. (f).)

Information supplied by appellant reveals that appellant incurred the subject tuition expense for the enrollment of his two five-year old children in the kindergarten class of a private school. Neither he nor the school were able to identify any portion of the tuition as having been paid for child care. It is well settled that deductions are a matter of legislative grace, and the burden of proving the right to a deduction is upon the taxpayer. (Deputy v. du Pont, 308 U.S. 488 [84 L.Ed. 416] (1940); Appeal of Richard M. Lerner, Cal. St. Bd. of Equal., Oct. 28, 1980.) Based upon the record of this appeal, we can only conclude that appellant has failed to establish that any part of the private school tuition paid in 1976 constituted an amount deductible as an employment-related expense under former section 17262.

For the reasons set forth above, respondent's action in this matter will be sustained.

Appeal of De Vaughn C. Lee

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 De Vaughn C. Lee against a proposed assessment of additional personal income tax in the amount of $134.37 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of March, 1982, by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg and Mr. Nevins present.

_______________, Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_______________, Member