

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.

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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 New 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

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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 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