

Appeal of George B. and Angela R. Sturr

The issues presented by this appeal are whether appellants are entitled to business expense deductions and a charitable contribution deduction in amounts greater than those allowed by respondent.

On their 1975 and 1976 joint California personal income tax returns, appellants claimed business expense deductions in connection with Mr. Sturr's employment in the amounts of \$16,746 in 1975 and \$14,129 in 1976. On their 1976 return, appellants claimed a charitable contribution deduction in the amount of \$7,900. Upon audit, respondent disallowed \$13,706 and \$11,289 of the business expense deductions for 1975 and 1976, respectively. It also disallowed \$3,160 of the charitable contribution deduction claimed in 1976. Respondent issued proposed assessments of additional tax for 1975 and 1976 and, after considering appellants' protest, reaffirmed the proposed assessments. This timely appeal followed.

The first issue concerns the business expense deductions. During the years at issue, Mr. Sturr (appellant) was a history and political science instructor at Los Angeles Harbor College. The disallowed deductions were primarily for expenses related to audio-visual equipment and a word processor, and for expenses incurred in maintaining an office in appellant's home. Mr. Sturr's preferred method of teaching included extensive use of audio-visual equipment, and, in addition to his teaching duties, he served on several Los Angeles Community College committees concerned with the use of film and television for educational purposes. In order to fulfill these duties, Mr. Sturr contends that he needed to have access to certain audio-visual equipment, which, during the years at issue, was not provided by the college. Notwithstanding the fact that appellant **used substantially** more of his personal funds than does the typical teacher, appellants conclude that all their claimed expenses were ordinary and necessary business expenses incurred in connection with Mr. Sturr's employment and, therefore, were deductible.

Revenue and Taxation Code section 17202 allows as a deduction all ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business. The performance of services by an employee constitutes a trade or business. (Noland v. Commissioner, 269 F.2d 108 (4th Cir.), cert. den., 361 U.S. 885 [4 L.Ed.2d 121] (1959).) An expense is necessary if it is appropriate and helpful in light of the taxpayer's business. (Commissioner v. Heininger, 320 U.S. 467 [88 L.Ed. 171] (1943).) An expense is ordinary if it is one which would be expected to be incurred, considering the taxpayer's type of business. (Lilly v. Commissioner, 343 U.S. 100 [96 L.Ed. 769] (1952).) Implicit in the concept of "ordinary and necessary" is a requirement that any expense claimed to be allowable as a deduction be reasonable in relation to its purpose. (United States v. Haskell Engineering & Supply Company, 380 F.2d 786 (9th Cir. 1967); Commissioner v. Lincoln Electric Co., 176 F.2d 815 (6th Cir. 1949),

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cert. den., 338 U.S. 949 [94 L.Ed. 5861 (1950).] An expenditure may be, by its nature, ordinary and necessary but, at the same time, be unreasonable in amount. In such a case, only the portion which was reasonable would qualify as a deductible expense. (United States v. Haskel Engineerinn & Supply, supra; Commissioner v. Lincoln Electric co., supra.)

Respondent argues that its disallowance of a portion of the claimed business expense deductions was correct because the amounts expended by appellant were unreasonable in relation to their purpose. We are convinced that respondent's position is correct. Appellant, on the other hand, contends that merely because he expended more of his personal funds in his teaching profession than does the average teacher does not make his expenses unreasonable. In this case, appellant incurred expenses of \$16,746 in 1975 while he earned a salary of only \$16,996. In 1976, he incurred \$14,129.00 in expenses and earned a salary of only \$19,404.00. Practical experience tells us that no employer would expect an employee to expend such a large percentage of his salary in order to earn that salary and that it was unreasonable for appellant to do so. Therefore, only the reasonable portion of the claimed expenses is deductible as a business expense. Our decision in this appeal does not conflict with the tax court's opinions in Samuel F. Patterson, ¶ 71,234 P-H Memo. T.C. (1971), and Seymour Feinstein, ¶ 70,288 P-H Memo. T.C. (1970). Nor does it conflict with the Internal Revenue Service's position as enunciated in Revenue Ruling 63-275, 1963-2 Cum.Bull. 85. In each of those situations, the amount held to be deductible as a business expense was found to be reasonable.

Respondent allowed appellant a business expense deduction equal to 17.88 percent of appellant's 1975 salary and 14.64 percent of his 1976 salary. We believe that, given the circumstances of this appeal, these amounts are reasonable and appellant has not shown otherwise. Therefore, respondent's action with regard to the claimed business expense deductions must be sustained.

The second issue is whether appellants are entitled to the claimed charitable contribution deduction. In 1976, appellants gave a set of 23 used films to Webb School, a qualified charity, and claimed a charitable contribution deduction of \$7,900. Respondent disallowed 40 percent of the claimed deduction because appellants used the full cost of the films rather than the depreciated value.

Revenue and Taxation Code section 17214 allows a deduction for contributions made to qualified organizations. If the contribution consists of property, rather than money, a deduction is allowed in an amount equal to the property's fair market value at the time of the contribution. (Cal. Admin. Code, tit. 18, reg. 17214, subd. (c) (Repealer filed April 16, 1981, Register 81, No. 16).)

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The only evidence we have regarding the charitable contribution deduction is a letter from Webb School. This letter merely acknowledges appellant's gift; it contains no information concerning the value of that gift. Since appellants have offered no evidence whatsoever showing the fair market value of the films, they have failed to prove their entitlement to a charitable contribution deduction greater in amount than that allowed by respondent.

For the foregoing reasons, the action of respondent must be sustained.

