



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
SHEO AND MEENAKSHI K. SHARMA)

For Appellants: Sheo Sharma,
in pro. per.

For Respondent: John A. Stilwell, Jr.
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 Sheo and Meenakshi K. Sharma against proposed assessments of additional personal income tax in the amounts of \$175.94, **\$1,653.43**, and **\$1,427.00** for the years 1977, 1978, and 1979, respectively.

Appeal of Sheo and Meenakshi K. Sharma

The issue presented by this appeal is whether appellants are entitled to various claimed deductions.

Respondent audited appellants' joint personal income tax returns for 1977, 1978, and 1979 and disallowed various deductions. These included deductions claimed for casualty losses, education and business expenses, expenses of buying and selling a home, and contributions to individual retirement accounts (IRA). A **credit** for child care expenses was also disallowed. Respondent's action in issuing proposed assessments for the years at issue and affirming them after considering appellants' protest resulted in this appeal.

Deductions are a matter of legislative grace, and it is the taxpayer's burden to prove that he **is** entitled to the claimed deduction. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934); Appeal of John A. and Julie M. Richardson, Cal. St. Bd. of Equal., Oct. 28, 1980.) Most of the deductions at issue in this appeal were disallowed because appellants either failed to prove that the loss or expense was incurred or failed to establish that it was a deductible, rather than personal, expense. Appellants have produced no new evidence, and the evidence they presented to respondent fails to substantiate the claimed deductions. Therefore, we must find that these deductions were properly disallowed.

The deductions claimed for appellant-husband's IRA contributions were correctly disallowed since he was an active participant in his employer's pension plan during the years on appeal. (Rev. & Tax. Code, § 17240; Appeal of James T. and Barbara D. Edwards, Cal. St. Bd. of Equal., July 26, 1982.) Appellants also claimed deductions for appellant-wife's IRA contributions for 1978 and 1979. Respondent disallowed the entire 1978 deduction since appellant-wife earned no income during that year and disallowed the 1979 deduction to the extent it exceeded 15 percent of her 1979 gross income. These action;; were correct since a deduction for an IRA contribution is allowed in an amount equal to the lesser **of** 15 percent of gross income or \$1,500. (Rev. & Tax. Code, § 17240.)

Finally, appellants **were not** entitled to the child care credit they claimed in 1979. Their adjusted gross income for that year exceeded \$19,999, and a taxpayer whose adjusted gross income exceeds that amount is not entitled to any child care credit. (Rev. & Tax. Code, § 17052.6; Appeal of James W. and Margaret R. Henderson, Cal. St. Bd. of Equal., Feb. 6, 1980.)

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

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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 Sheo and Meenakshi K. Sharma **against** proposed assessments of additional personal income tax in the amounts of \$175.94, **\$1,653.43**, and **\$1,427.00** for the years 1977, 1978, and 1979, respectively, be a:nd the same is hereby sustained.

Done at Sacramento, California, this 27th day of June, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis and Mr. Bennett present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u></u>	, Member