BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
MARVIN W. AND IVA G. SIMMONS)

For Appellants: Marvin W. Simmons,
in pro. per.

For Respondent: James C. Stewart
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 Marvin W. and Iva G. Simmons against a proposed assessment of additional personal income tax in the amount of $4,729.51 for the year 1974.

Marvin W. Simmons is a physician who has appealed respondent's determination to disallow deductions that he claimed for intangible drilling costs, Iva G. Simmons is his spouse and a party to this appeal solely by reason of their filing of a joint income tax return. For purposes of this appeal, only Marvin W. Simmons will hereafter be referred to as "appellant."

Appellant is another of the approximate 200 investors who purchased oil well interests from the Surety Drilling, Inc., drilling program which was the subject of our recent opinion in Appeal of Stanley A. and Leone M. Zimmerman, decided by this board on June 27, 1984. A brief description of that drilling enterprise shall suffice here. Prior to their fraud convictions in 1975, the principal promoters of the drilling program solicited and sold interests in non-existent oil wells in Kern County to high-income taxpayers seeking to obtain the benefits of a tax shelter., The turnkey contract price of a full interest in an oil well was $25,000, payable by a cash down payment of $5,000 with the balance covered by a promissory note. Even though there was no genuine obligation to repay the note, taxpayers would nevertheless claim deductions for intangible drilling expenses for the full amount of their contracts.

On his income tax return for 1974, appellant claimed a $41,800 deduction for intangible drilling costs under a turnkey contract and a $1,200 deduction for management fees allegedly incurred in connection with an oil exploration business. After auditing the return, respondent determined that it would allow appellant a deduction limited to his cash downpayment for his oil drilling interest. Respondent estimated appellant's cash downpayment to have been $7,500 based upon the amount of the deduction claimed for intangible drilling costs, When appellant failed to provide any information or documentation to verify the amount of his cash investment, respondent disallowed the claimed deductions in their entirety.

Thus, the sole issue presented for our resolution is whether appellant is entitled to any deductions for intangible oil drilling expenses for the year in question.

It is well settled that deductions are a matter of legislative grace, and the burden is on the taxpayer to show that he is entitled to the deductions claimed, (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78

L.Ed. 1348] (1934); Appeal of James C. and Monablanche A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975.) The deductibility of the drilling expenses in this appeal has been dealt with in the Zimmerman appeal, where we held that the taxpayer was not entitled to a deduction because he was not an operator with a working or operating interest in an oil well. Except for the amount of the cash downpayment,' which generally corresponds to the amount of the claimed deduction under the drilling program, the facts of this appeal are so similar as to compel the same conclusion.

There are two expenditures which could be claimed as possible deductions by an investor in this particular drilling venture. In Zimmerman, we questioned whether that amount of the contract covered by the promissory note could be considered an actual, bonafide drilling expense given the absence of liability for repayment of the note. The deductibility of the cash downpayment on an oil well interest was not at issue there since it had been allowed. Yet, respondent contended that the allowance was erroneous, explaining that the statute of limitations for additional assessments prevented correction of the error. In the present appeal, we note that respondent's offer to allow a deduction for this out-of-pocket expense contrasts with its position in the Zimmerman appeal. However, since appellant has made no attempt to substantiate any portion of his claimed deductions, we have no choice but to sustain their disallowance (see Appeal of Robert and Bonnie Abney, Cal. St. Bd. of Equal., June 29, 1982; Appeal of Dennis G. Davis, Cal. St. Bd. of Equal., Oct. 6, 1976) without considering the deductibility of the cash downpayment.

For the above reasons, we conclude that appellant has not proven his entitlement to the claimed deductions. Therefore, the action of respondent in this matter must be sustained.

Appeal of Marvin W. and Iva G. Simmons

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 Marvin W. and Iva G. Simmons against a proposed assessment of additional personal income tax in the amount of $4,729.51 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of November, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis and Mr. Bennett present.

Richard Nevins, Chairman,

Ernest J. Dronenburg, Jr., Member

Conway H. Collis, Member

William M. Bennett, Member

_____, Member