BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	No. 84A-1122
ROBERT W. AND	)	
GWENDOLYN CHEESEWRIGHT	)	

Appearances:

For Appellants: Robert W. Cheesewright, in pro. per.

For Respondent: Anna Jovanovich Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a),[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Robert W. and Gwendolyn Cheesewright for refund of personal income tax in the amount of $1,268.56 for the year 1980.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

The sole issue for consideration in this appeal is whether appellants are entitled to a charitable contribution deduction for expenses incurred while traveling to South Africa and South America as sports ambassadors under the auspices of the People-to-People Sports Committee.

On their 1980 joint personal income tax return, appellants claimed a charitable contribution deduction of $7,900 to the People-to-People Sports Committee (Sports Committee). During 1980, appellants traveled to South Africa and South America as a result of their selection as sports ambassadors for tennis competitions sponsored by the Sports Committee and incurred travel and out-of-pocket expenses in the amount of $7,900.

After a review of appellants' return, respondent disallowed the deduction. Appellants protested and after a re-examination of the return respondent affirmed its deficiency assessment.[2/] This timely appeal followed.

Appellants contend that they are entitled to deduct as charitable contributions their travel and out-of-pocket expenses incurred while they traveled as sports ambassadors for the Sports Committee. Respondent argues that appellants' expenditures do not qualify as charitable contributions because the expenditures were not made to, or for the use of, the charitable organization but were instead incurred in return for consideration received, in this case the chance to travel, play tennis, and meet interesting people.

The People-to-People Program was organized in the 1950's at the suggestion of President Eisenhower, to supplement the efforts of the United States government in broadening understanding and friendship with people of other nations. It functioned through committees, like the Sports Committee, which were led by prominent American citizens. These committees were private organizations which functioned on their own initiative and responsibility to make the objectives and principles of the United States better understood throughout the world. The Sports Committee was a nongovernmental, nonprofit membership corporation, which attempted to achieve these objec-

2/ Subsequent to the filing of their appeal, appellants paid the amount of the deficiency plus interest, thus converting the action to a claim for refund.

tives through sports exchanges between the United States and foreign countries. Such exchanges involved presentation of athletic demonstrations and competitions as well as the training and teaching of athletes and coaches. The Sports Committee also provided gifts of sports equipment to needy, developing nations throughout the world. Based on a description of these activities presented to the Internal Revenue Service, the Sports Committee received an unpublished determination letter dated December 15, 1964, stating that the Committee, itself, was an exempt organization under section 501(c)(3) of the Internal Revenue Code (IRC) and that contributions to it were deductible under section 170 of the IRC.

Section 17214, the state counterpart of section 170 of the IRC, provides, in relevant part:

> In computing taxable income there shall be allowed as a deduction, in case of an individual, contributions or gifts, payment of which is made within the taxable year to or for the use of:
>
> (a) The United States, a possession of the United States, any state, or any political subdivision thereof, or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.
>
> (b) A corporation, or trust, or community chest, fund or foundation --
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> * * *
>
> (2) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals; . . .

Since Internal Revenue Code section 170 is substantially similar to section 17214, federal case law and regulations can be of assistance in interpreting the California statute. (Rihn v. Franchise Tax Board, 131 Cal.App.2d 356, 360 [280 P.2d 893] (1955).)

Internal Revenue Code section 170(a) allows as a deduction any charitable contribution the payment of which is made within the taxable year. The term "charitable contribution" as used in section 170 is set forth in DeJong v. Commissioner, 36 T.C. 896 (1961), affd., 309 F.2d 373 (9th Cir. 1962), as follows:

> As used in this section the term "charitable contribution" is synonymous with the word "gift." . . . A gift is generally defined as a voluntary transfer of property by the owner to another without consideration therefor. If a payment proceeds primarily from the incentive of anticipated benefit to the payor beyond the satisfaction which flows from the performance of a generous act, it is not a gift.

In addition, Treasury Regulation section 1.170A-1(g) (1982) states in pertinent part:

> No deduction is allowable under section 170 for a contribution of services. However, unreimbursed expenditures made incident to the rendition of services to an organization contributions to which are deductible may constitute a deductible contribution. . . . Similarly, out-of-pocket transportation expenses necessarily incurred in performing donated services are deductible. Reasonable expenditures for meals and lodging necessarily incurred while away from home in the course of performing donated services also are deductible.

It is well established that the burden of proving that expenditures qualify as charitable contributions rests with the taxpayer. (Tate v. Commissioner, 59 T.C. 543 (1973); Saltzman v. Commissioner, 54 T.C. 722 (1970).) Several cases have sought to distinguish between the direct benefits which flow to the taxpayer as a consequence of payments to, or expenses incurred for the benefit of a qualified organization, which are not deductible, and deductible payments made directly to a charity which result in benefits accruing to the charity itself and only indirectly to the taxpayer as a member of the general public. (Murphy v. Commissioner, 54 T.C. 249 (1970); Perlmutter v. Commissioner, 45 T.C. 311 (1965).) Although the charity may also benefit from payments made to or expenses incurred for the benefit of a qualified organization, the presence of a substantial direct

personal benefit inuring to and anticipated by the taxpayer is fatal to any characterization of such payments or expenses as "charitable contributions." (Saltzman v. Commissioner, supra.) A payment, even though made to a qualified charitable organization, is not a "contribution or gift" for purposes of section 170 or section 17214 where it is made for the purpose of receiving some benefit in return. (See Appeal of Guy E. and Dorothy Hatfield, Cal. St. Bd. of Equal., Aug. 1, 1980.)

Although, as discussed above, contributions to the People-to-People Program have been allowed as charitable deductions, deductions for travel expenses and out-of-pocket expenses incurred on trips abroad sponsored by the Committee have been consistently disallowed. (Sheffels v. Commissioner, 405 F.2d 924 (9th Cir. 1969); Seed v. Commissioner, 57 T.C. 265 (1971); MacMichael v. Commissioner, ¶ 82,703 T.C.M. (P-H) (1982); Rev. Rul. 64-216, 1964-2 C.B. 63.) In the above cases, the courts held that the taxpayer was the primary beneficiary of the payments made or expenses incurred and the purposes of the government were served only incidentally. The expenditures made by taxpayers on various Committee-sponsored tours have been regarded by the courts as being made in exchange for consideration received and, as such, were not charitable contributions. (Seed v. Commissioner, supra.)

Appellants' tour included the same combination of amateur tennis competitions and social events with local participants as other Committee-sponsored tours. (See Exhibit A, People to People Tennis Team Trip to South Africa and South America, October 24 - November 22, 1980.) Following the reasoning and holding of the federal cases such as Seed v. Commissioner, supra, we conclude that however worthy appellants' motives were in participating in the tour, their expenditures were made in exchange for consideration received, in this case the tour, and cannot be considered charitable contributions.

For the above reasons, respondent's actions in this matter must be sustained.

Appeal of Robert W. and Gwendolyn Cheesewright

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Robert W. and Gwendolyn Cheesewright for refund of personal income tax in the amount of $1,268.56 for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of October , 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr. , Chairman

Conway H. Collis , Member

William M. Bennett , Member

Richard Nevins , Member

Walter Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9