

Appeal of David A. and Sandra Hollander

At issue is whether appellants are entitled to a claimed deduction for moving expenses.

Appellants moved from New Jersey to California during 1980. For that year, they filed a resident return and claimed a moving expenses deduction. On December 6, 1982, the Franchise Tax Board issued a notice of additional tax proposed to be assessed disallowing the deduction. The notice explained that for moves into or out of California, the moving expenses deduction was limited to the amount of the reimbursement for the move which had been included in adjusted gross income, or to the total amount of the actual moving expenses, whichever was lesser. Appellants protested. In response to a questionnaire from the Franchise Tax Board, they stated that they received no moving expenses reimbursement from their employer. They maintained that the claimed moving expenses had been incurred in California and were deductible against California income. They supplied no documentary substantiation of the amounts of their moving expenses. The Franchise Tax Board affirmed its proposed assessment.

In their appeal to this board, appellants' representative stated that the taxpayers had received reimbursement and that the reimbursement had been included in their adjusted gross income.

Section 17266 allowed a deduction for moving expenses paid or incurred in connection with the commencement of work by the taxpayer at a new principal place of work. That deduction was subject to several limitations and conditions set forth in that section, e.g., subsection (d) of that section provided:

In the case of an individual whose former residence was outside this state and his new place of residence is located within this state or whose former residence was located in this state and his new place of residence is located outside this state, the deduction allowed by this section shall be allowed only if any amount received as payment for or reimbursement of expenses of moving from one residence to another residence is includable in gross income as provided by Section 17122.5 and the amount of deduction shall be limited only to the amount of such payment or reimbursement or the amounts specified in subdivision (b), whichever amount is the lesser.

Appeal of David A. and Sandra Hollander

Therefore, appellants may not deduct any of their moving expenses unless they received reimbursement for those expenses. (Appeal of Norman L. and Penelope A. Sakamoto, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Richard K. and Roberta C. Myers, Cal. St. Bd. of Equal., June 28, 1979.) Appellants stated that they received no reimbursement for their moving expenses from their employer. Appellants' representative stated that appellants did receive such reimbursement but has provided no substantiation of that statement. The failure to substantiate any reimbursement prevents the deduction of any amounts which may have been paid or incurred as moving expenses. (Appeal of T. K. and Maralind Johnson, Cal. St. Bd. of Equal., Apr. 5, 1984.)

Accordingly, respondent's action in denying appellants' claimed moving expense deduction must be sustained.

Appeal of David A. and Sandra Hollander

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 David A. and Sandra Hollander against a proposed assessment of additional personal income tax in the amount of \$388 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.

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

*For Kenneth Cory, per Government Code section 7.9