

Appeal of Deauville Restaurant, Inc.,

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

Respondent audited appellant's franchise tax returns for the years at issue and disallowed certain claimed business expense deductions. The disallowed deductions which appellant disputes are primarily travel and entertainment expenses and auto expenses. Respondent's action in issuing proposed assessments for the years at issue and affirming them after considering appellant's 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.) Some of the deductions at issue in this appeal were disallowed because appellant failed to adequately substantiate them. Appellant has produced no evidence to substantiate these deductions. Therefore, we must find that they were properly disallowed.

The remaining deductions at issue were disallowed because respondent determined that they were personal expenses of James Murphy, who was the holder of 31.7 percent of the outstanding stock of appellant as well as president of the corporation. The only evidence appellant submitted concerning these expenses was an unsupported declaration made by the members of the corporation's board of directors that Mr. Murphy's duties required him to travel and entertain. Such evidence falls far short of the type of evidence needed to establish that the expenses were ordinary and necessary expenses of the corporation, (See Appeal of Oilwell Materials & Hardware Co., Inc., Cal. St. Bd. of Equal., Nov. 6, 1970.) Respondent treated the disallowed items as dividends paid to Mr. Murphy, taxable to him and not deductible by the corporation. Appellant now contends that they represent compensation to Mr. Murphy and, thus, are deductible by appellant. We must reject this argument, since there is no evidence to indicate that the payments in question were intended as compensation. (King, Quirk, & Co., Inc., ¶ 61,274, P-H Memo. T.C. (1961); Appeal of Delta Cesspool and Septic Tank Service, Inc., Cal. St. Bd. of Equal., March 19, 1963.)

Finally, appellant complains of the audit method employed by respondent. Rather than examine each of the years at issue, respondent made a detailed

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examination of the deductions claimed for the income year ended June 30, 1978, determined for each category of deduction what **percentage** of the claimed deduction was allowed, and then allowed that percentage for the other years at issue. Appellant contends that this is an unacceptable audit method. However, appellant has failed to offer any argument or to cite any authority *in* support of its contention. Under these circumstances, we cannot reject respondent's audit method. Furthermore, appellant has not attempted to establish its entitlement to business deductions in an amount greater than respondent allowed.

For the reasons discussed above, we must sustain respondent's action.

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O.RD 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 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax **Board** on the protest of Deauville Restaurant, Inc., against proposed assessments of additional franchise tax in the amounts of \$754, \$882, and \$1,849, for the income years ended June 30, 1978, June 30, 1979, and June **30**, 1980, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of January , 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. **Collis**, **Mr. Bennett** **Mr.** Nevins and Mr. Harvey present.

<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