BEFORE THE STATE BOARD OF EQUALIZATION

OF TBE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JARED C. DAVIS)

For Appellant: Jared C. Davis,
in pro. per.

For Respondent: Terry Collins
Counsel

O P I N I O N

This appeal is made pursuant to section 18593[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Jared C. Davis against proposed assessments of additional personal income tax in the amounts of $964, $1,364, and $1,797 for the years 1979, 1980, and 1981, respectively,.

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

Appeal of Jared C. Davis.

Two issues are presented by this appeal: (19 whether appellant has shown that he was entitled to the charitable contribution deductions which he claimed for payments made to a charter chapter of the Universal Life Church, and (2) whether appellant was entitled to his claimed head-of-household, filing status.

Appellant, a civilian employee of the United States Air Force, claimed charitable contribution deductions for the years 1979, 1980, and 1981 in the amounts of $6,059.15, $10,644.50, and $13,904.50, respectively. Respondent requested substantiation of these contributions and appellant furnished copies of canceled checks. Most of these checks were made out to "Universal Life Church" and deposited into an account in a Fairfield, California, bank.

Respondent disallowed the charitable contribution deductions, issued notices of proposed assessments, and appellant filed a protest. He provided receipts from the Universal Life Church, Inc. (ULC), located in Modesto, California, and referred respondent to that entity for further information regarding his contributions. Respondent requested additional information from appellant, but appellant did not respond. Respondent now concedes that the following amounts were made to qualifying charities and should be allowed: 1979; $62.50; 1980 - $99.50; and 1981 - $124.50.

Under section 17214, deductions were allowed for contributions or gifts paid in a taxable year to or for the use of:

> (b) A corporation, or trust, or community chest, fund or foundation--
>
> (19 Created or organized in the United States . . . or under the law of . . . any state . . .;
>
> (29 Organized and operated exclusively for religious . . . purposes . . .;
>
> (3) No part of the net earnings of which inures to the benefit of any private shareholder or individual; and
>
> (4) Which is not disqualified for tax exemption under Section 23701d by reason of attempting to influence legislation . . . .

The maximum allowable contribution deduction is equal to 20 percent of a taxpayer's adjusted gross income. (Rev. & Tax. Code, § 17215.)

It is well settled that deductions are a matter of legislative grace and that the taxpayer must show that he is entitled to any claimed deduction. (See, e.g., New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934).) The taxpayer must be able to point to an applicable statute and show by credible evidence, rather than mere assertions, that his claimed deduction comes within the terms of that statute, (New Colonial Ice Co. v. Helvering, supra, 292 U.S. at 440; Appeal of Linn L. and Harriett E. Collins, Cal. St. Bd. of Equal., Nov. 18, 1980.)

Respondent contends that appellant's contributions were not deductible because the recipient was not an organization described in section 17214 to which tax-deductible contributions could- be made. It alleges that appellant was engaged in a widespread tax avoidance scheme in which contributions were purportedly made to a charter of ULC by depositing funds into a bank account upon which the donors could draw. The contributions were then used by the donors to pay their personal expenses. Therefore, respondent argues, this charter was not organized and operated exclusively for religious purposes and its net earnings inured to the benefit of a private individual.

Section 17214 was substantially similar to Internal Revenue Code section 170(c). The federal courts have decided numerous cases involving ULC charters, consistently finding that deductions for contributions to these charters should be disallawed because the charters fail to meet the requirements of section 170(c). (E.g., Hall v. Commissioner; 729 F.2d 632 (9th Cir. 1984); Davis -Commissioner, 81 T.C. 806 (1983); Smith v. Commissioner, ¶ 84,661 T.C.M. (P-H) (1984); Martinez v. Commissioner, ¶ 84,526 T.C.M. (P-H) (3984); see.also Appeal of John R. Sherriff, Cal. St. Bd. of Equal., Dec. 13, 1983.)

Appellant has presented no evidence to show that his charter was organized or- operated any differently from those described by respondent. He has provided no information indicating that his charter was a section 17214 organization, contributions to which would be tax deductible.

Appellant has referred respondent to ULC for further information, apparently relying on the former tax-exempt status of that organization to establish his charter as a qualified recipient. 2/ However, ULC's exemption was not a group exemption covering ULC charters. (See Davis v. Commissioner, supra, 81 T.C. at 815 (fn. 9).)

Appellant argues that he is being discriminated against because he is a minister of the Universal Life Church. He is mistaken. His religious beliefs and the doctrines of ULC are irrelevant to this appeal. "However, when [he] seek[s] deductions for charitable contributions, [he] must satisfy the express requirements of section [17214], as must all other taxpayers." (Davis v. Commissioner, supra, 81 T.C. at 818.) This he has totally failed to do, and, as a consequence, we must sustain respondent's disallowance of his charitable contribution deductions.

With regard to the head-of-household issue, appellant submitted information showing that, during the appeal years, he was single and neither of his two daughters lived with him for more than six months in any year. When not living with appellant, the children lived with their mother. Respondent determined that appellant was entitled to a dependent exemption for each of his daughters, but that he was not entitled to head-of-household filing status.

Section 17042 provided in pertinent part:

> For purposes of this part, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, and . . .
>
> (a) Maintains as his home a household which constitutes for such taxable year the principal place of abode, as a member of such household, of--
>
> (1) A . . . daughter . . . of the taxpayer . . . .

2/ The Internal Revenue Service revoked ULC's tax-exempt status in Announcement 84-90, 1984--36 I.R.B. 32,

We have consistently held that section 17042 required that a qualifying dependent must occupy the taxpayer's household for the entire year- except for temporary absences due to special circumstances. (Appeal of Richard **H.** Brooke, Cal. St. Bd. of Equal,, April 5, 1983; Appeal of **Douglas** R. Railey, Cal. St. Bd. of Equal,, Aug. 15, 1978.) Appellant has presented'no evidence indicating that his daughters were merely temporarily absent from his household due to special circumstances. Under the circumstances, we must sustain respondent's denial **of** head-of-household filing status.

Appeal of **Jared** C. Davis

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 **Jared** C. Davis against proposed assessments of additional personal income tax in the amounts of $964, $1,364, and $1,797 for the years 1979, 1980, and 1981, respectively, be and the same is hereby modified in accordance with respondent's concessions as set forth in the foregoing opinion. In all other respects, the action of the Franchise Tax Board is hereby sustained.

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

Ernest **J.** Dronenburg, Jr. , Chairman

William M. Bennett , Member

Richard Nevins , Member

Walter Harvey* , Member

, Member

For Kenneth Cory, per Government Code section 7.9