

Appeal. of Eddie E. and Janice Reynolds

The issue presented on appeal is whether appellants are entitled to the full individual retirement account contribution they claimed as a deduction during the year in question.

Appellants, husband and wife, live in Poster City, California. During the year at issue, each appellant held a separate individual retirement account (IRA). On their joint income tax return for 1981, appellants claimed an IRA deduction of \$2,700: \$1,500 contributed to Mr. Reynolds' account and \$1,200 contributed to Mrs. Reynolds' account.

Before filing their 1981 tax return, appellants contend that they contacted one of respondent's agents regarding the proper method of reporting IRA contributions. Appellants were allegedly told by respondent's agent that the deduction is based on a taxpayer's "gross income." Appellants interpreted this information to mean that Mrs. Reynolds' IRA contribution could be based on a percentage of the gross receipts generated by her editorial services business.

Subsequently, respondent disallowed a portion of Mrs. Reynolds' IRA deduction because such a deduction is properly determined by a percentage of her gross individual earnings rather than the gross receipts derived from the business she owned. This appeal followed.

Section 17240 allows a deduction from an individual's gross income for amounts contributed to an IRA. The amount of the deduction for any taxable year cannot exceed the lesser of 15 percent of the taxpayer's "compensation" includible in gross income or \$1,500. (Rev. & Tax. Code, § 17240, subd. (b)(1).) "Compensation" as used in section 17240 includes "earned income" as defined in section 17502.2, subdivision (b). (Rev. & Tax. Code, § 17240, subd. (c)(1).) Section 17502.2, subdivision (b), states that "[t]he term 'earned income' means the net earnings from self-employment (as defined in Section 1402(a) of the Internal Revenue Code of 1954)."

Under section 1402, subsection (a), of the Internal Revenue Code "[t]he term 'net earnings from self-employment' means the gross income derived by an individual from any trade or business carried on by such individual less the deductions allowed by this subtitle' which are attributable to such trade or business."

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Appellants confuse the gross receipts of Mrs. Reynolds' business with the net earnings she actually received from her operation. It **is** clear from the above that under section **1402**, subsection (a), the amount **includible** in Mrs. Reynolds' gross income for purposes of determining her allowable IRA contribution is the net profit of her business. Consequently, appellants' determination of their IRA contribution was incorrect.

Appellants argue that respondent should be estopped from issuing its assessment because it was respondent's employee who directed them to section 17240, subdivision **(b) (1)**, which "referred to the deduction being based on 'gross income'." (App. Br. at 1.)

We note that estoppel will be invoked against a government: agency only in rare and unusual **circumstances**. (California Cigarette Concessions v. City of Los Angeles, 53 **Cal.2d** 865 [**3 Cal.Rptr.** 675] (1960).) It is well settled that informal opinions by respondent's employees on questions of taxability are insufficient to create estoppel against a taxing agency. (Appeal of Mary M. Goforth, Cal. St. Bd. of Equal., Dec. 9, 1980; Appeal of Richard W. and Ellen Campbell, Cal. St. Bd. of Equal., Aug. 19, 1975.)

Further, it appears that the issue is not one of estoppel but one of miscommunication between the parties. Respondent's employee **correctly** stated that appellants' deduction was allowed by section 17240, subdivision (b)(1), which stated that "[t]he amount allowable as a deduction ... may not exceed an amount equal to 15 percent of the compensation includable in his gross income." Unfortunately, appellants lifted the term "gross income" out of the context of this statute without carrying the qualifiers with it.

An IRA deduction is properly based upon "compensation includable in his gross income." (Rev. & Tax. Code, § 17240, subd. (b)(1).) As we explained above, "compensation" in the case of a **self-employed** individual means the net earnings derived from his business. Appellants reported the net earnings for Mrs. Reynolds' business for 1981 as **\$2,924.96**. That was the proper figure to be used in determining her allowable IRA deduction for 1981. Accordingly, respondent's action in this matter will be sustained.

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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 Eddie E. and Janice Reynolds against a proposed assessment of additional personal income tax in the amount of \$40 for the year 1981, be and the same is hereby sustained.

Done at Sacramento, California, this 30th day Of July , 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