74-SBE-036

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
MITCHEL J. AND FRANCES L. EZER)

For Appellants: Mitchel J. Ezer, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Noel J. Robinson
Counsel

OPINION

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Mitchel J. and Frances L. Ezer against a proposed assessment of additional personal income tax in the amount of $12 1.5 1 for the year 197 1.

Mitchel J. Ezer, hereinafter referred to as appellant, is a partner in the law firm of 'Rich 'and Ezer which is located in Los Angeles. Appellant also owns, along with Carl Rosenthal, all of the outstanding stock of Financial Growth, Inc. , which is also located in Los Angeles.

On his 197 1 California personal income tax return, appellant reported itemized deductions totaling $13,416.17. Of this amount, $1,518.79 represented deductions taken by appellant for gifts which he made during 1971. Those gifts and the amounts expended on them were as follows:

(1) A birthday gift to appellant's law partner, Richard P. Rich	$198.29
(2) A wedding gift to Mr. Rich's daughter, Vivian Rich Larson	$250.00
(3) A wedding gift to Carl Rosenthal's daughter, Marcia Rosenthal Block	$500.00
(4) A high school graduation gift to Mr. Rosenthal's son, Michael	$570.50.

After reviewing appellant's tax return, respondent disallowed the above deductions on the ground that the gifts did not constitute ordinary and necessary business expenses.

The sole issue for determination is whether the gifts made by appellant in 1971 were deductible as ordinary and necessary business expenses.

It is well settled that income tax deductions are a matter of legislative grace and the taxpayer has the burden of establishing the right to the claimed deduction. (New Colonial Ice Co. v. Helvering, 292 U. S. 435 [78 L. Ed. 1348]; Appeal of R. Edwin Wood, Cal. St. Bd. of Equal., Dec. 8, 1969.) Section 17202 of the Revenue and Taxation Code permits the deduction of "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." However, section 17282 of the Revenue and Taxation Code provides, in pertinent part, that "no deduction shall be allowed for personal, living, or family expenses." The same statutory language is found in the federal law. (See Int. Rev. Code of 1954, §§ 162, 262.)

In those cases where a gift was found to be deductible as an ordinary and necessary trade or business expense, the taxpayer was able to establish a close causal relationship between

the purpose of the payments and the trade or business in which the taxpayer was engaged. (See, e.g., Donald G. Teeling, 42 T.C. 671; Olivia de Havilland Goodrich, 20 T.C. 323; William Lee Tracy, 39 B.T.A. 578; Reginald Denny, 33 B.T.A. 738; but cf. Welch v. Helvering, 290 U.S. 111 [78 L.Ed. 212].) We have not previously been presented with a question identical to the present one... However, in a similar matter, a successful life insurance agent, sought to deduct a portion of the expenses incurred for his daughter's, wedding as ordinary and necessary business expenses. In that matter we held that the expenses were nondeductible personal or family expenses. (Appeal of R. Edwin Wood, supra; see also Haverhill Shoe Novelty Co., 15 T.C. 517.)

Appellant, in attempting to satisfy his burden of proof, maintains that each of the gifts in question was "business originated and business oriented." He states that the primary prupose of the gifts was to preserve a good working relationship between his partners and himself. However, such conclusionary statements are not sufficient to satisfy appellant's burden of proof. Appellant has failed to offer any substantive proof which would establish the specific relationship which these expenses bear to the conduct of the particular businesses engaged in by hirn. Amounts expended for the general purpose of permitting appellant to practice his vocation with greater profitability, such as the deductions here in question, are too remote in their bearing on the conduct of appellant's immediate businesses to permit their deduction as ordinary and necessary business expenses. (Welch" v. Helvering, supra; Henry C. Smith, 40 B.T.A. 1038.)

In support of his position appellant stresses the fact that California did not follow the 1962 federal amendments which added section 274 to the Internal Revenue Code of 1954. Among other things, section 274 limits the deductibility of certain gifts, at the federal level, to a statutory maximum. Since California did not enact a similar statutory limitation, appellant concludes that the deductions are allowable in their entirety for purposes of the California personal income tax. We do not agree.

Appellant misconstrues the federal statute. The federal regulations specifically provide that "[s]ection 274 is a disallowance provision exclusively, and does not make deductible any expense which is disallowed under any other provision of the Code." (Treas.

Regs. § 1.27-1-l.) Thus, this section does not convert an otherwise nondeductible personal or family expense into an ordinary and necessary business expense. In order to be deductible at the federal level the claimed expense must, first, qualify as an ordinary and necessary business expense;, then it must satisfy the stringent requirements of section 274. The fact that California has not seen fit to enact a counterpart of section 274 does not, change the requirement that appellant must establish that the expenses incurred constituted ordinary and necessary business expenses in order to be deductible. This appellant has failed to do.

Accordingly, it is our opinion that respondent's action in this matter was proper and must be sustained.

ORDER

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 Mitchel J. 'arid Frances L. Ezer against a proposed assessment of additional personal income tax in the amount of $121.51 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 23rd day of September, 1974, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Secretary