BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
STUART D. AND KATHLEEN WHETSTONE)

For Appellants: Stuart D. Whetstone, M. D., in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

David M. Hinman
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 protests of Stuart D. and Kathleen Whetstone against proposed assessments of additional personal income tax for the following years and amounts:

Appellant	Year	Amount
Stuart D. and Kathleen Whetstone	1968	$352.92
Stuart D. Whetstone	1969	$189.61
Kathleen Whetstone	1969	$189.62

At issue is the deductibility of certain travel and living costs incurred by Stuart D. Whetstone (hereinafter referred to as appellant) while. living apart from his family.

Appellant is a physician who since 1959 has maintained a permanent residence in Fullerton, California. His wife and children lived there throughout the years in question. He at one time owned a general medical practice in Fullerton, but sold this practice to another doctor in October 1965, and since that date he has sought work from various employers. Because he is a general practitioner, however, he has found it difficult to obtain suitable employment at an acceptable salary. Appellant also states that, because of his age, he cannot stand the long hours and heavy work-load required by most employers.

In the first year after the sale of his practice, appellant held successive jobs in San Diego, Fullerton, and Whitefish, Montana. During the next year he worked as head of the Student Health Clinic at Claremont College, about twenty miles from Fullerton. While at Claremont appellant took quarters for the school year in Upland, somewhat nearer to the campus, but his family remained in Fullerton. Appellant thought he had a binding contract to work at Claremont for at least two years, but at the end of the first year the college informed him that his services would no longer be required.

Appellant was then offered a position with the Southern Monterey County Medical Group (SoMoCo) in King City, California. He at first decided not to accept this offer, but changed his mind after further search in the Fullerton area disclosed no suitable opportunities. He began to work for SoMoCo on September 1.0, 1967, as a staff employee rather than as a member of the Group. After a three-month trial period appellant was assigned to an evening' clinic for migrant workers. The clinic was financed by a grant from the Office of Economic Opportunity, and it appears that appellant's tenure with SoMoCo was contingent on the availability of continued government funding. Appellant and SoMoCo each agreed to give three months. notice if either party wished to terminate the employment relationship.

After he had worked ten months for SoMoCo, appellant was' told that money for the evening clinic had been cut from the government grant, and that he would therefore lose his job. Before this happened, however, SoMoCo apparently found a new source of

funds, and appellant was in fact not terminated. He continued with SoMoCo until he resigned on July 20, 1969.

After two months without a job, appellant applied to return to work at SoMoCo. He was rehired in September 1969, still as a staff employee rather than as a member of the Group. In the spring of 1970 SoMoCo asked appellant to become a Group member, but he was not yet sure whether he wished to do so. In November SoMoCo began to pressure him to join the Group. Appellant decided that he no longer wished to work there, and resigned effective December 30, 1970.

King City is approximately 300 miles from Fullerton. Appellant lived in the King City area throughout the time he was employed by SoMoCo, while his family remained in Fullerton. On their 1968 and 1969 California personal income tax returns, appellant and his wife claimed deductions for his living expenses while in King City, and for the costs of weekend trips which appellant made-' to visit his family. Respondent disallowed the deductions, and this appeal followed.

Revenue and Taxation Code section 17282 specifically disallows deductions for personal, living, or family expenses, However, section 17202, subdivision (a)(2), allows deductions for ordinary and necessary traveling expenses, including amounts expended for meals and lodging, incurred while the taxpayer is "away from home in the pursuit of a trade or business;. .." These statutes are substantially identical to sections 262 and 162(a)(2) of the Internal Revenue Code of 1954. The purpose of the traveling expense deduction is to equalize the burden between the taxpayer whose employment requires business travel and the taxpayer whose employment does not. (James v. United States, 308 F. 2d 204; Lloyd G. Jones, 54 T. C. 734, 740, aff'd 444 F. 2d ,508.) Therefore, expenditures motivated by the personal conveniences of the taxpayer and not required by the exigencies of business do not qualify for the deduction. (Ford v. Commissioner, 227 F. 2d 297, 299.) To qualify, the expenses must be: (1) reasonable and necessary traveling expenses; (2) incurred while the taxpayer is "away from home"; and (3) incurred in pursuit of the trade or business of the taxpayer or his employer. (Commissioner v. Flowers, 326 U. S. 465, 470 [SO L. Ed. 203]; Appeal of Roy Chadwick, Cal. St. Bd. of Equal., Oct. 7, 1974.)

The courts have adopted various approaches in applying these rules to cases where, as here, a taxpayer with an established residence in one locality accepts employment in another, takes quarters near his job but continues to maintain the permanent residence for his family, and attempts to deduct the resulting duplicate living expenses. Respondent denied the deductions here involved on the basis of a long line of cases from the United States Tax Court. That court construes the word "home" to mean "tax home, " that is, the vicinity of one's principal place of business. (See, e.g., Ronald D. Kroll, 49 T. C. 557.) An exception is recognized, and a taxpayer's "home" does not shift to the locale of his employment, if his job was to be "temporary" rather than "permanent" or "indefinite. " A job is "temporary" only when its termination can be foreseen within a fixed or reasonably short period of time. (Robert N. Mullins, T. C. Memo., Aug. 5, 1974.) Respondent argues that appellant's position with SoMoCo was "indefinite, " that his "tax home" therefore shifted to King City, and that he was thus not "away from home" for purposes of the traveling expense deduction.

Appellant counters with cases holding that "home" means one's permanent residence, not one's place of business. (See, e.g., Wallace v. Commissioner, 144 F. 2d 307.) He also argues that, in any event, his "tax home" could not have shifted to King City merely because his job was "indefinite, " because it is not reasonable to expect him to have moved his family there. While we agree with appellant that the reasonableness of his actions is the proper test to be applied, we hold nonetheless, for the reasons expressed below, that he is not entitled to the claimed traveling expense deductions.

In Appeal of Roy Chadwick, supra, we discussed the various theories applied by the courts to cases of this sort. As we there noted, the courts agree that the ultimate issue to be decided is whether, under all the circumstances, it is reasonable to expect the taxpayer to have moved his permanent residence to the vicinity of his employment. If it is reasonable to expect the taxpayer to have moved, then duplicate living expenses resulting from a failure to do so are not deductible as traveling expenses, either on the theory that his "tax home" shifted to the area of his employment, or because his decision to maintain a separate residence was a matter of personal choice and not required by business necessity. (Compare Truman C. Tucker, 55 T. C. 783, 786 with Six v. United States, 450 F. 2d 66; 69.)

Appellant took the position with SoMoCo because he. could not find suitable employment nearer to his permanent family residence, and he had no business ties in Fullerton while he was in King City. At the beginning of the taxable years in question, he had already survived a three-month trial period with SoMoCo, and must have been aware that the workload and hours required there were not too strenuous for him. Although he was told that his job depended on continued government funding, there is nothing in the record to indicate that, when he started at the night clinic, he thought such funding was likely to end in the near future. When government funds for the night clinic were cut from the budget, appellant was in fact not terminated. He worked at SoMoCo for approximately thirty-six months, and finally left for personal reasons, because he did not wish to become a member of the Group. Taken together, these facts show that appellant, at the beginning of the appeal years, could have anticipated being employed by SoMoCo for a substantially long period. From this we conclude that it is reasonable to expect him to have moved his permanent residence to King City, and that his failure to do so was motivated by purely personal considerations. (Harvey v. Commissioner, 283 F. 2d 491, 495; Wright v. Hartsell, 305 F. 2d 221,224; Dennis D. Goodman, T. C. Memo., Dec. 20, 1971.) Appellant is therefore not entitled to the claimed traveling expense deductions .

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Stuart D. and Kathleen Whetstone

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 protests of Stuart D. and Kathleen Whetstone against proposed assessments of additional personal income tax for the following years and amounts:

Appellant	Year	Amount
Stuart D. and Kathleen Whetstone	1968	$352.92
Stuart D. Whetstone	1969	$189.61
Kathleen Whetstone	1969	$189.62

be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of January, 1975 by the State Board of Equalization.

John W. Lynch, Chairman

_____, Member

Richard Nevins, Member

George R. Reilly, Member

_____, Member

ATTEST: W. W. Dunnigan, Secretary