BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
HARRY F. AND)
PATRICIA M . BOLFING)

Appearances:

For Appellants: Harry F. Bolfing, in pro. per.

For Respondent: John A. Stilwell, Jr.
Counsel

O-P-I-N-I-O-N

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 Harry F. and Patricia M. Bolfing against a proposed assessment of additional personal income tax in the amount of $147.96 for the year 1970.

The issue presented is whether certain expenses incurred by an employee, and reimbursed by his employer, were properly deductible as moving expenses, or, alternatively, whether the reimbursements were not includible in gross income.

Appeal of Harry F. and Patricia M. Bolfing

Harry F. Bolfing (hereafter appellant) was employed by the Federal Aviation Agency in Falls Church, Virginia, as a controller. In 1970 he and his family moved their residence to California because of his tranfer in federal service to the United States Postal Department, in basically the same occupation, The federal government reimbursed appellant $5, 426. 06 for some of the expenses related to the move. Appellants included this amount as gross income in their 1970 joint state personal income tax return and deducted the same amount as moving expenses.

Respondent initially denied the entire deduction because section 17266 of the Revenue and Taxation Code, as it read in 1970, disallowed any deduction for moving expenses unless both the former and new residence were located within this state.

In their written protest to respondent, appellants indicated that the expenses involved were: (1) $1, 917. 62, for transporting household effects; (2) $286. 20, for transporting the family automobile; (3) $500.39, for transporting appellant and his family; (4) $554. 46, for the cost of meals and lodging while occupying temporary quarters: (5) $2, 110. 50, for sale of their former residence; and (6) $200.00, miscellaneous expenses; or a total of $5,569. 17.' Item (5) also included some expenses incurred in acquiring the new residence. Appellants only protested the denial of the $5, 426. 06 deduction for the expenses which were reimbursed.

Ultimately, respondent concluded that the expenses incurred by appellant, and reimbursed by his employer, for moving the household effects, the automobile; himself, and his family, were deductible, but disallowed the balance of the deduction. Consequently, the proposed tax assessment was reduced from $318.41 to $147.96.

Appellant urges that all the expenses which were reimbursed should have been allowed as a deduction. He explains that he had no option as to how to use the travel advances and reimbursements. He emphasizes that the 1970 moving expenses were audited by the Internal Revenue Service, and the entire amount deducted on the federal return was allowed. He points out that he even received a refund of federal taxes based upon the allowance of an additional deduction for such expenses.

As previously indicated, during 1970 section 17266 of the Revenue and Taxation Code expressly precluded any moving expense deduction from gross income in connection with the commencement of work as an employee at a new principal place of work unless the former and new residence were located within this state. Inasmuch as there was no California statute in effect in 1970 allowing the deduction of appellant's job-related interstate moving expenses, none of the amounts were properly deductible from gross income.

The next question is whether the reimbursements actually constituted gross income. We must first explain that the proper basis for respondent's allowance of a partial deduction was not that the amounts were deductible but that they simply did not constitute gross income. During the year in question, if an employee was transferred from one location to another in the interest of his employer, the employer's reimbursement of direct moving costs was not includible in the employee's gross income. 1/ (FTB LR 341, Oct. 5, 1970.) This exclusion from gross income pertained solely to reimbursements for expenses paid by the transferred employee in transporting himself, his immediate family, household goods, and personal effects from one place of employment to another permanent place of employment for the benefit of his employer. In the absence of specific legislation, such reimbursements were not considered as compensation or any other type of gross income. (See England v. United States, 345 F. 2d 414, cert. denied, 382 U. S. 986 [15 L. Ed. 2d 475]; Rev. Rul. 54-429, 1954-2 Cum. Bull. 53; Rev. Rul. 65-158, 1965-1 Cum. Bull. 34.) These expenses were treated as essentially the employer's expenses and reimbursements for them were consequently not income to the employee., (See Rev. Rul. 65-158, supra.)

1/ Subsequent statutory changes to the California Revenue and Taxation Code, operative in 1971, specifically require the inclusion of such reimbursement in gross income but allow a deduction for specified expenses incurred in such interstate moves. See present sections 17122.5 and 17266 of the Revenue and Taxation Code.

It was well settled, however, that reimbursements for indirect moving expenses, such as expenses of sale and purchase of residences and of meals and lodging while occupying temporary quarters at the new location, were essentially payments for personal expenses, and thereby included within the broad definition of gross income under the federal law. (Int. Rev. Code of 1954, § 61(a).) The authority for this well established view includes England, supra, and the revenue rulings cited above, as well as many other judicial decisions. (Lull v. Commissioner, 434 F. 2d 615; Commissioner v. Starr, 399 F. 2d 675; Ritter v. 393 F. 2d 823, cert. denied, 393 U. S. 844 [21 L. Ed. 2d 1151; Brian P. McMahon, T. C. Memo., April 12, 1973; Logan v. United States, 16 Am. Fed. Tax. R. 2d 5486, vacated but reinstated, 18 Am. Fed. Tax. R. 2d 5943.) The same broad definition of gross income is found in subdivision (a) of Revenue and Taxation Code section 17071. Therefore, such reimbursements constituted gross income in 1970 for state tax purposes.

Appellant relies upon the federal audit to support his position for two reasons. First, the Internal Revenue Service allowed the entire deduction claimed. Second, the Service also allowed an additional deduction which resulted in a tax refund. However,, during the year in issue the state and federal laws were different., By an amendment of section 217 of the Internal Revenue Code of 1954, operative for the year 1970, reasonable expenses of meals and lodging while occupying temporary quarters in the general location of the new principal place of work, and certain expenses of the sale and purchase of residences, were added to the category of deductible moving expenses, subject to certain monetary limits. 2/ Furthermore, the deductions allowed by section 217 are not limited

2/ At the same time, section 82 was added to the Internal Revenue Code of 1954, providing for inclusion in gross income of **any** amount received as reimbursement for moving expenses incurred changing residences attributable' to employment. Section 217, first applicable in 1964, formerly limited the deduction to the so-called direct moving costs, but disallowed a deduction where reimbursement was not includible in gross income. Thus, reimbursement for such costs to existing employees being transferred simply was not gross income, nor were such expenses deductible, until 1970. New employees, on the other hand, were always required to include reimbursement for direct moving costs in gross income but could deduct such expenses after 1963. It was not until 1970 that either type of employee could deduct the other specified expenses for federal tax purposes.

to the amount of reimbursement. In contrast, while there have been changes in the California law otherwise allowing the deduction of the expenses claimed in appellants' 1970 state return, these statutory changes were not operative until the year 1971. 3/

Finally, there is a factual question concerning the nature of the "miscellaneous expenses" where appellants have not met the burden of proof. (Hoefle v. Commissioner, 114 F. 2d 713.)

Accordingly, we must sustain respondent's action because, during the year in issue, the expenses which are the subject of this appeal were not deductible from gross income, nor were the reimbursements therefor excludable from gross income.

3/ See present sections 17266 and 17122.5 of the Revenue and Taxation Code. Even under subdivision (d) of present section 17266, the deduction may not exceed reimbursement in interstate moves.

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 Harry F. and Patricia M. Bolfing against a proposed assessment of additional personal income tax in the amount of $147.96 for the year 1970, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of March, 1975, by the State Board of Equalization.

John W. Lynch, Chairman

William M. Bennett, Member

George R. Reilly, Member

Paul Carpenter, Member

_____, Member

ATTEST: Charles H. Ottoman, Acting Secretary