75-SBE-030

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In, the' Matter of the Appeal of)
)
ROBERT J. AND)
EVELYN A. JOHNSTON)

Appearances:

For Appellants: Robert J. Johnston, in pro. per.

For Respondent: Karl F. Munz
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 Robert J. and Evelyn A. Johnston against a proposed assessment of personal income tax in the amount of $80. 49 for the year 1967.

The issue presented is the propriety of respondent's disallowance of certain deductions based upon similar federal action.

Robert J. Johnston (hereafter "appellant") is engaged in the practice of law as a sole practitioner in Pasadena, California. Consequently, he incurs deductible business expenses. Following a federal audit of appellants' 1967 joint federal income tax return, the Internal Revenue Service's report indicated the following adjustments:

	Claimed	Allowed	Disallowed
(a) Entertainment Expense	$ 1,957.18	$1,102.18	$ 855.00
(b) Auto Expense	4,454. 62	2978.00	1,476.62
(c) Office in Home	600.00	-0-	600.00
(d) Professional Expense	3,938.77	1,823. 23	2, 115.54
Total	$10,950.57	$5,903.41	$5,047.16

Other business expenses claimed of $6,721.06 were allowed in their entirety.

Appellants filed a 1967 joint state personal income tax return claiming the same business expense deductions as shown on the federal return, and determined that there was no state tax liability. Because of the federal action, respondent similarly increased appellants' taxable income by $5,047. 16, and issued a proposed assessment in the amount of $89. 49. Appellants protested, informing respondent that the federal determination was being disputed.

Thereafter, appellant, notified respondent that agreement had been reached with the Internal Revenue Service, and submitted a copy of the final federal audit showing, as the only additional change, a further allowance of $300.00 for miscellaneous business expenses. Appellants paid the $554. 17 federal deficiency assessment. In his letter to respondent, appellant indicated that on the basis of the federal adjustments, the state tax liability was $2.00. However, appellant's computation was incorrect. Respondent reduced taxable income by $300.00 in conformity with the final federal action, and decreased its proposed assessment to $80.49. This appeal followed.

In resolving this matter, we must recognize that respondent's proposed assessment based on a federal audit report is presumed correct and the 'burden .is on the taxpayer to prove it

erroneous. (Appeal of Sidney and De Daun Buegeleisen, Cal. St. Bd. of Equal., April 9, 1973; Appeal of Henrietta Swimmer, Cal. St. Bd. of Equal., Dec. 10, 1963.) Moreover, deductions are a matter of legislative grace and the burden of proving the right thereto is upon the taxpayer. (New Colonial Ice Co. v. Helvering, 292 U. S. 435 [78 L. Ed. 1348].)

With this background in mind, we shall now consider appellant's contentions. First, he alleges that he only acquiesced in the federal adjustments because of coercion and economic reasons. Even if true,--this assertion only explains appellant's motivation for entering into the agreement. It has no bearing on whether the federal determination was-correct. (Appeal of Donald D. and Vi-rginia C. Smith, Cal. St. Bd. of Equal., Oct. 17, 1973; Appeal of Sidney and De Daun Buegeleisen, supra; Appeal of Samuel and Ruth Reisman, Cal. St. Bd. of Equal., March 22, 1971.)

Next, he maintains that canceled checks- supplied federal agents substantiated all deductions but he was advised that more detail was required by federal law and regulations. Appellant argues that such, detailed information would have necessitated the release of confidential information, jeopardizing his professional license, and thereby unconstitutionally deprive him of property without due process of law. Appellant also urges that he was unconstitutionally denied procedural due process by not having an oral hearing before respondent.

With respect to such arguments, this board has a well established policy of declining to rule on constitutional questions raised in appeals involving deficiency assessments. This policy is based upon the absence of any specific statutory authority which would allow respondent to obtain judicial review of an adverse determination. in a case of this type, and the belief that such review should be available for questions of constitutional importance. (Appeal of Harold and Sylvia Panken, Cal. St. Bd. of Equal., Sept. 13, 1971; Appeal of C. Pardee Erdman, Cal. St. Bd. of Equal., Feb. 18, 1970.)

In any event, we simply cannot see how substantiation of the business expenses at issue would violate the attorney-client privilege of confidentiality.

We also note, with respect to the alleged denial of procedural due process, that section 18592 of the Revenue and Taxation Code provides for the granting of an oral hearing by respondent on a protest against a proposed assessment, "if the taxpayer has so requested in his protest. " No such request was made. (See Appeal of George R. Wickham and Estate of Vesta B. Wickham, Cal. St. Bd. of Equal. , Aug. 3, 1965.)

At the hearing before this board appellant also offered to introduce copies of canceled checks as evidence supporting the disallowed deductions for state income, tax purposes. He was asked to present them in auditable form. Subsequently, they were submitted together with an itemized list segregating them into several categories and totals.

After reviewing this material, we conclude that it does not substantiate appellant's position that there were more deductible ordinary and necessary business expenses for state tax purposes than those allowed. The state and federal provisions defining business expenses are similarly worded. (Rev. & Tax. Code, § 17202; Int. Rev.. Code of 1954, § 162.) It is true that under certain conditions the requirements for the deductibility of entertainment, gift, and travel expenses for business purposes are more 'stringent under federal. law than under California law. (See Int . Rev. Code of 1954, § 274, effective for taxable years ending after December 31, 1962.) Appellant places substantial reliance upon those additional federal requirements as justifying different treatment by respondent. Nevertheless, section 17296 of the Revenue and Taxation Code imposes considerable limitations of its own by expressly disallowing any deduction for traveling or entertainment expenses unless substantiated by adequate records or by sufficient evidence which corroborates. the taxpayer's own statement.

The following comments are pertinent concerning the submitted material. Of the checks furnished, appellant did not categorize any as specifically for disallowed professional, convention, or education expenses. A $3,938.77 deduction was taken for such expenses, and was partially disallowed under the item (d) adjustment labeled "Professional Expense" in the initial federal audit.

No checks clearly show any business use of the home and, therefore, no approximation of such expense by respondent is necessary. (Mayrath v. Commissioner, 357 F. 2d 209.) No clear distinction has been shown between alleged amounts of improperly disallowed business expenses and amounts expended for nonbusiness automobile use, travel, and entertainment, or for nondeductible meals of appellants. (See Adam J. Tomsykoski, T. C. Memo., April 29, 1974; Hearn v. Commissioner, 309 F. 2d 431, cert. denied, 373 U. S. 909 [10 L. Ed. 2d 411]; Richard A. Sutter, 21 T.' C. 170.) In other instances, the checks conceivably represent business expenses allowed and-not in issue. We note also that in his brief appellant indicates he has other business records but. none of these were produced.

At the hearing appellant also urged that his wife's share of the expenses of attending an American Bar Association convention in Hawaii were properly deductible. He explained that she was his secretary for many years and attended all seminars and activities at the convention. Such expenses would be deductible if the dominant purpose of Mrs. Johnston's trip was to serve her husband's business purpose and if she spent substantial time in fulfilling that purpose. (Compare Wilkins v. United States, 348 F. Supp. 1282 with L. L. Moorman, 26 T. C. 666.) However, the checks submitted by appellant simply do not substantiate that such expenditures were made.

Finally, with respect to this entire matter we note that all but $4,747. 16 of $17, 671. 63 claimed as business expenses have been allowed, including a substantial amount of the claimed entertainment and automobile expenses,

We conclude that appellants have failed to meet their burden of establishing error in either the federal determination or in respondent's action.

Appeal of Robert J. and Evelyn A. Johnston

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 Robert J. and Evelyn A. Johnston against a proposed assessment of personal income tax in the amount of $80. 49 for the year 1967, be and the same is. hereby sustained.

Done at Sacramento, California, this 22nd day of April, 1975, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Executive Secretary