



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE **STATE** OF CALIFORNIA

In the Matter of the Appeal of )  
 )  
 ARIANO AND FLORENCE PAGLIASSOTTI )

For Appellants:      A. C. Fiore  
Tax Consultant

For Respondent:     Bruce W. Walker  
                                 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 protest of Ario and Florence Pagliassotti against a proposed assessment of additional personal income tax in the amount of \$76.08 for the year 1970.

## Appeal of Ario and Florence Pagliassotti

The issue presented is whether certain travel expenses of appellant Ario Pagliassotti were deductible as ordinary and necessary business expenses.

In connection with his employment with Lockheed Aircraft Corporation, appellant was required to travel from his office in Burbank to several other Lockheed facilities. He used his own automobile and could have been reimbursed for these expenses but failed to make any claim therefor. However, 'appellants claimed a deduction for these expenses on their joint California income tax return for 1970. Respondent disallowed the deduction and proposed a deficiency assessment.

Section 17202 of the Revenue and Taxation Code provides for the deduction of all ordinary and necessary expenses incurred in carrying on any trade or business. Section 17072, subdivision (b)(3), specifies that transportation expenses incurred by the taxpayer in connection with the performance by him of services as an employee are deductible. These sections are substantially similar to sections 162 and 62 of the Internal Revenue Code of 1954. Where considerable similarity exists between California and federal law, the interpretation given to its statutes by the federal government is entitled to great weight. (Appeal of Clayton B. and Dorothy M. Neill, Cal. St. Bd. of Equal. , April 24, 1967. )

The federal cases have established the legal principle that automobile expenses for which the taxpayer could have been reimbursed by his employer are not necessary expenses of the taxpayer. (Horace E. Podems, 24 T. C. 21; Heidt v. Commissioner, 274 F. 2d 25. ) Deductions are considered personal to the taxpayer and not transferable. (Hal E. Roach, 20 B.T. A. 919. )

Appellant characterizes his failure to seek reimbursement as a "voluntary pay cut" and states that he was motivated by fear of being laid off due to the financial problems of Lockheed. However, a voluntary 'relinquishment of the right to reimbursement does not entitle the employee to a deduction for travel expenses. In the case of Fred W. Phillips, T: C. Memo., March 12, 1973, the employer's published rules allowed for full reimbursement for automobile expenses, but the employer had verbally limited the amount of reimbursement. The court allowed the taxpayer to deduct expenses which exceeded the limits imposed by the company.

Appeal of Ario and Florence Pagliassotti

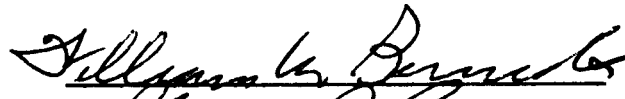
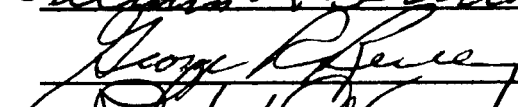
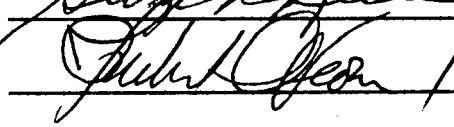
Appellants have advanced no evidence that Lockheed's policy of reimbursing employees for their travel expenses had been changed. The subjective fear of possible adverse consequences of claiming the expenses is not sufficient as a matter of law to justify the deduction. Under the circumstances, it must be concluded that the appellants have not met their burden of proving that they were entitled to the deduction.

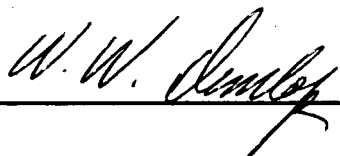
ORDER

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 Ario and Florence Pagliassotti against a proposed assessment of additional personal income tax in the amount of \$76.08 for the year 1970, 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