BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WILLARD D. AND)
DELORIS N. HORWICH)

Appearances:

For Appellants: Willard D. Horwich, in pro. per.

For Respondent: Marvin J. Halpern
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 Willard D. and Deloris N. Horwich against proposed assessments of additional personal income tax in the amounts of $135.8.4, $199.96 and $140.23 for the years 1969, 1970, and 1971, respectively.

The issue presented is whether the value of personal services rendered directly to a charitable organization is deductible as a charitable contribution pursuant to section 17214 of the Revenue and Taxation Code.

Mr. Horwich (hereafter appellant) is an attorney and a certified public accountant. During the years in issue appellant rendered legal and accounting services without monetary compensation to a qualified charitable organization. Appellant estimated the value of the services at $2,500 for each year and claimed that amount as a deduction for charitable contributions on his joint California personal income tax returns. Respondent disallowed the claimed deductions on the basis of its regulations which provide, in part, that "[n]o deduction is allowable for contribution of services. " (Cal. Adm. Code, tit. 18, reg. 17215, subd. (b).)

Section '17214 of the Revenue and Taxation Code allows as a deduction in computing an individual's taxable income "contributions or gifts, payment of which is made within the taxable year to or for the use of [certain qualified organizations]. " Section 17215 of the Revenue and Taxation Code provides, in part, that "contributions 'or gifts shall be allowed as dedudtions only if verified under rules and regulations prescribed by the Franchise Tax Board. " Interpretive regulations were issued in 1961 to implement section 17215. (See Cal. Adm. Code, tit. 18, reg. 17215.) Appellant contends that the regulations, insofar as they disallow a deduction for the contribution of services, are either contrary to or an unauthorized. interpretation of the law.

The California courts and this board have not previously considered the deductibility of the value of personal services contributed to a charitable organization. However, the prdvisions of the Revenue and Taxation Code dealing with charitable contributions, and the regulations promulgated thereunder, are substantially identical to their federal counterparts. (See Int. Rev. Code of 1954, § 170 et seq. ; Treas. Reg. § 1.170 et seq.) Under such circumstances the interpretation and effect given the federal provisions are highly persuasive with respect to proper construction of the state law. (Holmes v. McColgan, 17 Cal. 2d 426, 430 [110 P. 2d 428], cert. de-14 U.U. S. 636 [86 L. Ed. 510]; Rihn v. Franchise Tax Board, 131 Cal. App. 2d 356, 360 [280 P. 2d 893].)

Therefore, in determining the validity of respondent's position, we shall consider judicial pronouncements concerning the corresponding federal regulation and the relevant legislative history of the federal statute.

Treasury Regulation section. 1. 170-2(a)(2) provides that "[n]o deduction is allowable for contribution of services, " The validity of the regulation has not been directly challenged in the federal courts. However, its applicability has been considered in several federal court decisions. In Geza Korda, T. C. Memo. , August 26, 197 1, the taxpayer claimed a deduction for the contribution of research work relating to international trade relations. In denying the deduction, the Tax Court cited section 1.170-2(a)(2) and stated that "[p]etitioner's claimed contribution is of services, and, therefore, even if petitioner had shown the services to have been rendered in the year 1966 and to have been rendered to an organization described in section 170(c), the deduction would not be allowable. " Similarly, where a taxpayer claimed a deduction for the charitable contribution of films of his own production, the Tax Court stated that "if there is any merit in respondent's argument that what petitioner actually contributed was services, section 1. 170-2(a)(2), Income Tax Regs. , would prohibit a deduction for that contribution. " (ohn R. Holmes 57 T. C. 430, 436: see also Orr v. United States, 3& F. - 5 5; Bernard Goss, 59 T. C. 594.) Although, as appellant argues, the above cited language may represent mere "dicta", these cases provide at least tacit approval of the administrative position reflected within Treasury Regulation section 1. 170-2(a)(2).

Appellant maintains that the term "contribution", as used in section 170 of the Internal Revenue Code of 1954 and section 17214 of the Revenue and Taxation Code, was intended to include the donation of personal services to qualified charitable organizations. Therefore, appellant argues, the administrative position which disallows a deduction for such contributions is an unauthorized restriction upon the scope of the federal and state statutes. We do not agree.

Section 170(a)(l) of the Internal Revenue Code of 1954 provides that "[a] charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate. " It is our opinion that Treasury

Regulation section 1.170-2(a)(2) is a reasonable exercise of this authority. 1/ The administrative problems, in terms of valuation and verification, which would accompany the allowance of a deduction for the contribution of personal services, would impose a heavy burden upon the Government--a result clearly not intended by Congress. (H. R. Rep. No. 1860, 75th Cong. 3d Sess. 19 (1938); 55 Cong. Rec. 6728 (1917).) Furthermore, the administrative position which appellant now questions has stood unchallenged for more than fifty years while Congress, with the regulation published and presumably known to it, has not rejected the position or amended the statute so as to indicate a contrary intent. This is a strong factor tending to support the validity of Treasury Regulation section 1. 170-2(a)(2). (Helvering v. Winmill, 305 U. S. 79 [83 L. Ed. 52]; Coca-Cola Co. v. State Board of Equalization, 25 Cal. 2d 918, 921 [156 P. 2d 1].)

For the reasons stated above, which are equally applicable with respect to the validity of respondent's regulation 17215, subdivision (b), we believe we should uphold the long established administrative position denying a charitable deduction for the contribution of personal services. Accordingly, it is our conclusion that respondent's action in this matter must be sustained.

1/ The regulation was originally issued in 1920 pursuant to substantially identical language contained in section 214(a) 11 of the Revenue Act of 1918. (Fed. Inc., Tax Ruling #1277, 0. D. 712, 3 Cum. Bull. 188 (1920), declared obsolete, Rev. Rul. 69-31, 1969-1 Cum. Bull. 307.)

Appeal of Willard D. and Deloris N. Horwich

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 Willard D. and Deloris N. Horwich against proposed assessments of additional personal income tax in the amounts of $135.84, $199.96 and $140.23 for the years 1969, 1970,and 1971, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of November 1975, by the State Board of Equalization.

John W. Lynch, Chairman

Member

Member

Member

Member

ATTEST: W. W. Dunlop, Executive Secretary