



76-SBE-031

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
BENJAMIN L. YELLEN)

For Appellant: Benjamin L. Yellen, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Paul J. Petrozzi
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 protests of Benjamin L. Yellen against proposed assessments of additional personal income tax in the amounts of \$254.99 and \$186.64 for the years 1967 and 1968, respectively.

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The question presented is whether appellant is entitled to business expense deductions for certain expenditures associated with community political action.

Appellant Benjamin L. Yellen is a physician practicing in Brawley, California. Some of his patients are farm laborers and itinerant workers. At least as early as 1962 appellant began to feel that certain activities of corporate farmers, insurance companies and various government agencies were adversely affecting his medical practice. In particular, appellant says that the corporate farmers were illegally importing cheap foreign labor, and paying such low wages that appellant's patients could not afford to pay for his services. He also charges that federal and local government agents were involved in a conspiracy with the corporate farmers to allow these practices to continue. In addition, the insurance companies handling medical programs for migrant workers were apparently paying only \$2.00 for each visit to a doctor, which appellant considered a "swindle."

In order to protect his medical practice, and also to protect the economic well-being of his patients, appellant decided to take steps against the alleged conspiracy. Among other actions, he began to publish a periodic newsletter as a forum for his views, which he apparently distributed to the public free of charge. He ran for election to several government positions and was once elected to the City Council in Brawley. He traveled to Washington, D.C. to discuss the situation with federal officials. He also became involved in a lawsuit to enforce federal reclamation laws against the corporate farmers, which was ultimately successful. Appellant states that these actions increased his income both by protecting the livelihood of farm workers and by attracting new patients to his medical practice. He also states that the corporate farmers took reprisals against him because of his activities, including the filing of allegedly "trumped-up" criminal charges in an attempt to ruin his reputation.

On his California personal income tax return for the years in question, appellant deducted various expenses incurred in his battle against the corporate farmers. Respondent disallowed

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the deductions on the ground that the expenditures were not "ordinary and necessary" expenses of carrying on a medical practice. Appellant protested, and this appeal followed respondent's denial of that protest.

Revenue and Taxation Code section 17202, which is substantially similar to section 162 of the Internal Revenue Code of 1954, authorizes a deduction for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, . ." To be deductible under this section, an expense must be both ordinary and necessary. (Welch v. Helvering, 290 U. S. 111, 113 [78 L. Ed. 212].) An expense is not ordinary unless it arises from a transaction "of common or frequent occurrence in the type of business involved." (Deputy v. du Pont, 308 U. S. 488, 495 [84 L. Ed. 416].) Some of the expenditures which are generally not considered ordinary and necessary business expenses are expenses of attempting to influence legislation (Cammarano v. United States, 358 U. S. 498 [3 I. Ed. 2d 462]), campaign expenses incurred in running for public office (McDonald v. Commissioner, 323 U. S. 57 [89 L. Ed. 68]), and expenses of defending against criminal charges which do not arise in connection with the taxpayer's business activity (Nadiak v. Commissioner, 356 F. 2d 911).

In this case, the record does not make clear the precise nature of appellant's expenditures. It appears that they were incurred mostly in publishing appellant's newsletter, traveling to Washington, D. C., defending against or prosecuting various legal actions, and campaigning for public office. We may assume, for purposes of this discussion, that each of these expenses was necessary to protect appellant's medical practice. Appellant sincerely believed them so, and we "should be slow to override his judgment." (Welch v. Helvering supra, 290 U. S. at 113.) The fact remains, however, that the expenses must also have been "ordinary" to be deductible, and it does not appear that they were. Certainly activities such as appellant's are not a common or frequent means by which doctors, in Rrawley or elsewhere, protect the livelihood of their patients or attract new patients. Accordingly, we must conclude that the expenditures in question are not deductible as business expenses of appellant's medical practice. (Deputy v. du Pont, supra.)

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Appellant argues, however, that his political activities were so extensive as to constitute a trade or business in themselves, and that the expenses in question were ordinary and necessary in carrying on that business. We disagree. To be considered a trade or business, an activity must usually be conducted with the good faith intention of making a profit. (Hirsch v. Commissioner, 315 F. 2d 731; Everett R. Taylor, T. C. Memo., Sept. 16, 1969; Appeal of Everett R. and Emeline H. Taylor, Cal. St. Bd. of Equal., June 2, 1971.) It has also frequently been stated that "carrying on any trade or business... involves holding one's self out to others as engaged in the selling of goods or services." (Deputy v. du Pont, supra, 308 U.S. at 499 [concurring opinion of Mr. Justice Frankfurter]; McDowell v. Ribicoff, 292 F. 2d 174, 177, cert. denied, 368 U. S. 919 [7 L. Ed. 2d 135].) In conducting his political activities, appellant did not hold himself out as selling goods or services for a profit.

For the above reasons, we sustain respondent's action.

O R D E R

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

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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 Benjamin L. Yellen against proposed assessments of additional personal income tax in the amounts of \$254.99 and \$186.64 for the years 1967 and 1968, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of **March**, 1976, by the State Board of Equalization.

William L. Burns Jr., Chairman
Robert K. Davis, Member
George A. Kelly, Member
_____, Member
_____, Member

ATTEST: W.W. Dunlop, Executive Secretary