



\*76-SBE-038\*

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of        )  
                                                  )  
EMIDIO AND THERESA FALCONE        )

For Appellants:       Nadine R. Hansen

For Respondent:       James W. Hamilton  
                          Acting Chief Counsel

Timothy W. Boyer  
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Emidio and Theresa Falcone for refund of personal income tax in the amount of \$151.00 for the year 1970.

Appeal of Emidio and Theresa. Falcone

The issue for determination is whether expenses incurred by appellants in moving from Connecticut to California were deductible, or, alternatively, whether the reimbursements were not includible in gross income.

Appellants filed a joint California personal income tax return for 1970 showing a net tax liability of \$521. In 1974, appellants filed an amended return for 1970 in which they claimed, as an adjustment to income, moving expenses in the amount of \$2,500 incurred in their move from Connecticut to California. The \$2,500 moving expenses resulted from the sale of their Connecticut residence and included selling commission, escrow fees, and attorney fees. As a result of this adjustment, appellants' net tax liability for 1970 as reflected on the amended return was reduced to \$370. Accordingly, appellants claimed a refund of the additional \$151 which had been paid with their original return. Respondent disallowed the claimed moving expense deduction on the basis that both appellants' old and new residences were not within California, and denied the claim for refund. This appeal followed.

The only provision of the California Revenue and Taxation Code expressly allowing a deduction for moving expenses is section 17266, which provides for a deduction of certain expenses incurred by a taxpayer as an employee in connection with the commencement of work at a new principal place of work. However, during the year on appeal, no deduction was allowable unless the taxpayer's former residence and new place of residence were located in California. (Rev. & Tax. Code, §17266, subd. (c)(1)(C). ) In the instant appeal, appellants' former residence was located in Connecticut. Accordingly, appellants are prohibited from claiming the deduction by the express language of the statute as it read in 1970. (Appeal of Harry F. and Patricia M. Bolfig, Cal. St. Bd. of Equal., March 18, 1975; Appeal of George A. and Suzanne M. Khouri, Cal. St. Bd. of Equal., June 6, 1973.)

In support of their position appellants submitted an excerpt from the 1973 filing instructions which accompanied the personal income tax return form for that year. Those instructions

Appeal of Emidio and Theresa Falcone

indicated that a moving expense deduction of the "lesser of the actual- expenses incurred or the amount of payment for, or reimbursement of, such expenses included in income" was permissible. Section 17266 was extensively revised in 1971. However, the revisions were prospective only. (See Rev. & Tax. Code, § 1.7266, subd. (i). ) Since it is the year 1970 which is in issue in this appeal, the subsequent statutory changes reflected in the publication cited by appellant are not applicable. (See Appeal of Harry F. and Patricia M. Bolfig, supra. )

Next, appellants maintain that they improperly included reimbursed moving expenses in their 1970 gross income and urge that their claim for refund be granted on this basis. It is true that, during the year in issue, 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. However, in the instant appeal, appellants were reimbursed for indirect moving expenses, those related to the sale of their prior residence. It is settled that reimbursement of indirect moving expenses, such as 'expenses incurred in the sale of a personal residence, are essentially payments for personal expenses and includible within the definition of gross income. (England v. United States, 345 F. 2d 414, cert. denied, 382 U. S. 986 [15 L. Ed. 2d 475]; Appeal of Harry F. and Patricia M. Bolfig, supra. ) Accordingly, reimbursement of the indirect moving expenses was properly included in appellants' 1970 gross income,

Since, during the year in issue, the expenses in question were not deductible, and the reimbursements therefor were not excludible from gross income, we must sustain respondent's action in denying appellants' claim for refund.

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,

Appeal of Emidio and Theresa Falcone

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Emidio and Theresa Falcone for refund of personal income tax in the amount of \$151.00 for the year 1970, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1976, by the State Board of Equalization.

*William L. Bennett*, Chairman  
*George R. Jones*, Member  
*Robert D. Lee*, Member  
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\_\_\_\_\_, Member

ATTEST: *W. W. Linlop*, Executive Secretary.