

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES D. AND MARY J. BAYS)

Appearances:

For Appellants: James D. Bays, in pro. per.

For Respondent: John A. Stilwell, Jr.
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 James D. and Mary J. Bays against a proposed assessment of additional personal income tax in the amount of \$86.60 for the year 1972.

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Appellant James D. Bays and his former wife, Teresa, were divorced sometime prior to 1972. The court order granting the divorce apparently gave Teresa custody of the couple's minor children and directed appellant to pay an award for the children's support. On their joint California personal income tax return for the year in question, appellant and his present wife claimed a \$2,040 deduction for payments made pursuant to this order. Respondent disallowed the deduction, and this appeal followed.

In considering the issue presented by this appeal, it must be kept in mind that deductions are a matter of legislative grace. (New Colonial Ice Co. v. Helvering, 292 U. S. 435, 440 [78 L. Ed. 1348].) The allowance of deductions does not turn on general equitable considerations. Rather, they may be allowed only to the extent authorized by the Legislature. (Greenspon v. Commissioner, 229 F. 2d 947, 954.) It follows that the taxpayer, in order to establish his right to a claimed deduction, must be able to point to an applicable statute and show that he comes within its terms. (Appeal of Benjamin F. and Sue S. Kosdon, Cal. St. Bd. of Equal., May 4, 1976.) In this case, since the Personal Income Tax Law contains no provision specifically authorizing a deduction for payments made to support minor children, respondent argues that appellant, cannot meet this burden.

Appellant appears to argue, however, that payments made to support minor children pursuant to a divorce decree are analogous to alimony, and should therefore be allowed as an alimony deduction under Revenue and Taxation Code section 17263. He points out that, like alimony, child support payments diminish the disposable income of the parent who makes the payments and benefit the parent who receives them. Section 17263, however, allows a deduction for alimony payments only to the extent they are includible in the gross income of the wife under section 17081. Although there may be some similarity between alimony and payments to support minor children, child support payments are not includible in the gross income of the wife under section 17081. (Rev. & Tax. Code, § 17082.) Accordingly, such payments do not qualify for a deduction as alimony. (Benjamin Wolman, 64 T. C. 883.)

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Appellant also argues that the deduction should be allowed, in any event, because the instructions accompanying the personal income tax form are ambiguous concerning child support payments. As indicated above, however, the allowance of deductions is the sole prerogative of the Legislature. Therefore, mere ambiguities in the instructions issued by state tax administrators, without more, cannot serve to justify a deduction which has not been authorized by the legislature. (See Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct. 7, 1974.)

Finally, appellant states that he was not entitled to claim any credits for personal exemption for his children. He suggests that this is unfair, and that we should allow the deduction in question in order to cure the inequity. The fact remains, however, that the Revenue and Taxation Code contains no specific authorization for such a deduction. Accordingly, while we may sympathize with appellant, we must agree with respondent that the payments which appellant made toward the support of his minor children are not deductible. We therefore sustain respondent's action.

ORDER

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 protest of James D. and Mary J. Bays against a proposed assessment of additional personal income tax in the amount of \$86.60 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of June,, 1976, by the State Board of Equalization.

William B. Bann, Chairman
George J. Frazier, Member
Paul W. Hearn, Member
Gene Sanborn, Member
_____, Member

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