BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
HAROLD J. AND JO ANN GIBSON)

For Appellants: Harold J. Gibson
in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Brian W. Toman
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 Roard on the protest of Harold J. and Jo Ann Gibson against a proposed assessment of additional personal income tax in the amount of $212.46 for the year 1967.

Appellants filed a joint California personal income tax return for the year 1967 on which they claimed deductions for business and moving expenses. Pursuant to

an audit of the return, respondent proposed an assessment of additional tax on the basis of its determination that appellants had failed to substantiate certain portions of the claimed expenses. Thereafter, upon receiving additional information from appellants regarding the claimed expenses, respondent reduced the proposed assessment. The table below indicates the business expenses in question and respondent's action with respect thereto.

Business Expense	Amount Claimed	Amount Allowed	Amount Disallowed
Automobile	$2,231.85	$2,053.67	$178.18
Travel	360.00	105.95	254.05
Entertainment	480.03	225.22	254.81
Home Office	839.00	567.00	272.00

Respondent also disallowed $179.87 of a $430.96 moving expense deduction claimed by appellants.

The primary issue presented by this appeal is whether respondent's action in disallowing the described portions of the claimed deductions was proper. Our resolution of this issue with respect to each of the expense categories is based upon the presumption of correctness which accompanies respondent's determination of any tax deficiency. Specifically, the burden is upon appellants to prove their entitlement to each of the claimed deductions, and to verify each alleged expense. (See New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348]; Todd v. McColgan, 89 Cal. App. 2d 509, 514 [201 P.2d 414]; Appeal of James C. and Monablanche A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975; Appeal of James M. Denny, Cal. St. Bd. of Equal., May 17, 1962.)

BUSINESS EXPENSES

Section 17202 of the Revenue and Taxation Code provides, in pertinent part:

> (a) There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including --

* * *

> (2) Traveling expenses (including amounts expended for meals and lodging ...) while away from home in the pursuit of a trade or business...,

Appellants contend that during 1967 Mr. Gibson incurred automobile, travel, entertainment, and home office expenses in connection with his activities as an insurance and real estate salesman, and that the total amounts of the expenses were properly claimed as deductions on appellants' return. In support of their contention, appellants submitted various records and receipts which relate to the expenses in question. After considering the evidence presented by appellants, and for the reasons stated below, we conclude that respondent properly disallowed the previously indicated portions of the claimed business deductions.

With respect to the automobile expenses, appellants contend that Mr. Gibson used his car solely for business purposes during 1967 and, therefore, that all expenses incurred as the result of such use are deductible. Respondent, on the other hand, contends that Mr. Gibson incurred home to office commuting costs and other nondeductible personal expenses while using his car during 1967. Accordingly, respondent argues that its allowance of over 90 percent of the claimed automobile expenses was proper.

In computing the amount of the automobile expense deduction, appellants applied a standard mileage rate to the total mileage driven by Mr. Gibson during 1967. However, the records submitted by appellants in support of the deduction do not include a detailed mileage log, work schedules, or other information which might prove that respondent's determination of 90 percent business usage is erroneous. Therefore, in the absence of persuasive evidence of the extent to which Mr. Gibson used his car for business purposes, we must accept respondent's determination as correct. (See Clement v. **Conole**, T.C. Memo., May 18, 1971; Arthur C. **McCluskey**, T.C. Memo., Jan. 28, 1965.)

The amounts claimed by appellants as travel and entertainment expenses represent expenditures allegedly incurred by Mr. Gibson for meals while traveling away from home and for the entertainment of his clients and business

associates during 1967. With respect to the meal expenses, the record on appeal contains no substantiation of the expenditures other than a bare listing of amounts on an expense summary sheet. The listing does not specify the time, place, or business purpose of the travel involved, nor have appellants submitted receipts or cancelled checks to verify the amounts claimed. With respect to the entertainment expenses, although appellants have submitted a detailed account of the time, place, and amount of some of the claimed expenses, they have verified only a portion of such. expenditures. Furthermore, appellants have failed. to demonstrate that all of the entertainment expenses were directly related to Mr. Gibson's business. Therefore, we must also conclude that respondent's action in disallowing the indicated portions of the claimed travel and entertainment deductions was proper. (See Appeal of Otto L. Schirmer, et al., Cal. St. Bd. of Equal., Nov. 19, 1975; Appeal or Robert J. and Evelyn A. Johnston, Cal. St. Bd. Of Equal., April 22, 1975. See also Rev. and Tax. Code, § 17296; Cal. Admin. Code, tit. 18, reg. 17202(b).)

The final business expense deduction claimed by appellants relates to expenditures allegedly incurred by Mr. Gibson for the maintenance of a home office during 1967. The claimed deduction apparently includes the depreciation of certain office furniture, an expense incurred for the replacement of carpeting in the office, and other miscellaneous expenses. However, the record on appeal does not contain a clearly itemized description of the alleged expenses. Furthermore, appellants have not presented sufficient evidence to establish the business nature of each of the expenses in question. Accordingly, to the extent of the disallowed portion of the claimed home office deduction, we must again conclude that appellants have not met their burden of establishing error in respondent's determination.

MOVING EXPENSES

During the year in issue section 17266 of the Revenue and Taxation Code provided, in pertinent part:

> (a) There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee at a new principal place of work.

> **(b) (1) For** purposes of this section, the term "moving expenses" means only the reasonable expenses --
>
> (A) Of moving household goods and personal effects from the former residence to the new residence,
>
> * * *

In May 1967, appellants moved from a residence in Woodland Hills, California, to a residence in Palm Springs, California. Apparently, the Palm Springs residence could not accommodate all of appellants' furniture at the time of their move. Therefore, appellants kept a portion of the furniture in storage at Palm Springs until December 1967.

The moving expense deduction claimed by appellants on their 1967 return includes the expenditures incurred in connection with the storage and eventual move of their extra furniture. Respondent disallowed the portion of the claimed deduction attributable to such expenses. Respondent also disallowed a portion of the deduction attributable to alleged miscellaneous moving expenses which appellants had failed to substantiate.

It is our opinion that the storage and related expenses incurred by appellants subsequent to the arrival of their furniture at Palm Springs are not deductible moving expenses. As previously indicated, section 17266 allows as a deduction the reasonable expenses of moving household goods from a former residence to a new residence. Expenses incurred for the storage of household goods subsequent to their arrival at the general location of the new residence do not constitute "moving expenses". (Cf. James M. Ross, T.C. Memo., May 25, 1972.) Therefore, since section 17266 contains no provision for the deduction of such expenses, we must sustain respondent's action in disallowing that portion of appellants' moving expense deduction. With respect to the alleged miscellaneous moving expenses, appellants have not submitted any evidence which might verify the claimed expenditures. Therefore, we must also sustain respondent's action in disallowing the portion of appellants' moving expense deduction attributable to the alleged miscellaneous moving expenses. (See Alfred L. Von Tersch, Jr., T.C. Memo., Aug. 31, 1972.)

In summary, after reviewing the material presented by appellants in support of the claimed business and moving expenses,- we must conclude that appellants have. failed. to meet their burden of establishing error in respondent's action., Our conclusion is based primarily upon appellants' failure to identify and substantiate the disallowed portions of the claimed expenses-,, Moreover, the record on appeal provides no clear distinction. between alleged amounts of improperly d&allowed business expenses and amounts conceivably expended for nonbusiness automobile, use,, travel, and. entertainment. Finally, with. respect to the storage expenses incurred by appellants. subsequent to their move to Palm Springs, it is our opinion that California tax. law contains no provision authorizing the deduction of such expenses. Therefore,, in. accordance with the views expressed above, we conclude that respondent's action, in disallowing the. previously, described portions of appellants' business and moving. expense. deductions was proper and. must be. sustained,

ORDER

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

Appeal of **Harold** J. and Jo Ann Gibson

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 Harold J. and Jo Ann Gibson against a proposed assessment of additional personal income tax in the **amount** of $212.46 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of October, 1976, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____ **Executive** Secretary