BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WILLIAM F:. AND EUNICE M. KLUND)

Appearances:

For Appellants: William E. and Eunice M. Klund, in pro. per.

For Respondent: Rrian 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 Board on the protest of William E. and Eunice M. Klund against a proposed assessment of additional personal income tax in the amount of $101.69 for the year 1972.

The sole question for decision is whether appellants were entitled to deduct as a charitable contribution the amount of the payments which they made to the County of San Diego as contributions to the support of appellant husband's mother.

During the year on appeal, the California Welfare and Institutions Code contained provisions [1/] requiring a responsible adult child to contribute to the support of a parent receiving public assistance under the Old Age Security Law (Welf. & Inst. Code, former §§ 12000-12252). The amount of the contribution was dependent upon the adult child's ability to pay (Welf. & Inst. Code, former § 12101). In the event the required contributions were not made, the county furnishing aid to the elderly parent could bring an action against the noncomplying adult child to recover that portion of the aid that the child was liable to pay, and to order future compliance with the law (Welf. & Inst. Code, former § 12100).

Pursuant to those, statutory provisions, on April 28, 1972, appellant husband executed a "Responsible Relative Agreement," whereby he agreed to pay $137.00 per month to the County of San Diego as a contribution to the support of his mother, a recipient of public assistance under the Old Age Security Law. On their joint personal income tax return for 1972, appellants claimed a deduction in the amount of $1,370.00, the total of their payments to the County of San Diego during that year. Respondent's disallowance of that deduction as a charitable contribution gave rise to this appeal.

Section 17214 of the Revenue and Taxation Code provides, in pertinent part:

1/ Welf. & Inst. Code, former § 12100 et seq. These sections were repealed by Stats. 1973, ch. 1216, p. 2903, § 36, urgency, eff. Dec. 5, 1973. For present law, providing for nonliability of relatives, see section 12350 of the Welfare and Institutions Code.

> In computing taxable income there shall be allowed as a deduction, in the case of an individual, contributions or gifts, payment of which is made within the taxable year to or for the use of:
>
> (a) The United States, a possession of the United States, any state, or any political subdivision thereof, or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes.
>
> * * *

Similar language is found in the federal law (Int. Rev. Code of 1954, § 170 (a) and (c)),[2/] and federal authority is therefore relevant in construing California law. (Meanley v. McColgan, 49 Cal. App. 2d 313 [121 P.2d 7721 (1942).)

Appellants' primary contention is that the payments which they made to the County of San Diego during 1972 qualified under the above quoted portions of section 17214 of the Revenue and Taxation Code as deductible. contributions made to a political subdivision of

2/ Section 170 of the Internal Revenue Code of 1954 specifically provides for the deduction of charitable contributions. The above quoted section of the California Personal Income Tax Law speaks in terms of "contributions *or* gifts," omitting the word "charitable." *To* that extent, therefore, the California provision reads more similarly to the comparable deduction provision contained *in* section 23 (o) of the 1939 Internal Revenue Code and its predecessors. However, with or without the word "charitable," the sections have always *been* construed to govern the deductibility of charitable contributions or gifts. (See Channing v. United States, 4 *F.* Supp. 33 (D. Mass. 1933), aff'd per curiam, 67 F.2d 986 (1st Cir. 1933), cert. denied, 291 U.S. 686 [78 L. Ed. 1072] (1934); Harold DeJong, 36 T.C. 896 (1961), aff'd, 309 F.2d 373 ('9th Cir. 1962); also see respondent's regulations, Cal. Admin. Code, tit. 18, reg. 17214.2

the State of California for exclusively public purposes. In support of this argument, appellants urge that the "Responsible Relative Agreement" which appellant husband signed, and all other documents issued by the County relating thereto, referred to the payments as "contributions.' Appellants' reasoning is that by making these payments they, and other adult children like them, were reducing the tax burden which the general public would otherwise have to bear, and the "contributions" were therefore made "for exclusively public purposes," within the meaning of section 17214 of the Revenue and Taxation Code. We cannot agree.

It is well settled that income tax deductions are a matter of legislative grace and the burden of proving the right thereto is upon the taxpayer. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348] (1934); Deputy v. du Pont, 308 U.S. 488 [84 L. Ed. 416] (1940); Appeal of Mitchel J. and Frances L. Ezer, Cal. St. Bd. of Equal., Sept. 23, 1974.) In order to sustain that burden, the taxpayer must be able to point to an applicable deduction statute and show that he comes within its terms. (New Colonial Ice Co. v. Helvering, supra, 292 U.S. at 440) Although the appellants herein have attempted to bring themselves within the literal terms of section 17214 of the Revenue and Taxation Code, we must conclude, for the reasons set forth below, that they have failed to do so.

As it is used in the sections dealing with the deductibility of charitable contributions, the word "contribution" is synonomous with the word 'gift.' (Harold DeJong, 36 T.C. 896 (1961), aff'd, 309 F.2d 373 (9th Cir. 1962); Channing v. United States, 4 F. Supp. 33 (D. Mass. 1933), aff'd per curiam, 67 F.2d 986 (1st Cir. 1933), cert. denied, 291 U.S. 686 [78 L. Ed. 10721 (1934).) Payments which are made under compulsion of law are not in the nature of contributions or gifts, as those terms are used in the deduction provisions. (See Woodside Mills v. United States, 160 F. Supp. 356 (W.D. So. Car. 1958), aff'd per curiam, 260 F.2d 935 (4th Cir. 1958); Jordan Perlmutter, 45 T.C. 311 (19.65); compare Jerome Scheffres, et al., T.C. Memo., Feb. 26, 1969 and Ben I. Seldin, T.C. Memo., Nov. 3, 1969.) In addition, the Internal Revenue Service has ruled that payments made to a state hospital for the purpose of reimbursing the state for the care of a perspn confined in the hospital do not

constitute contributions or gifts made to or for the use of a state for exclusively public purposes, within the meaning of section 170 of the Internal Revenue Code of 1954. (Rev. Rul. 57-211, 1957-1 CB 97.)

The "contributions" made by appellants to the County of San Diego were not in the nature of voluntary gifts, but were required by law. That being so, we must sustain respondent's action in disallowing their deduction as a charitable contribution for 1972.

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,

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 William E. and Eunice M. Klund against a proposed assessment of additional personal income tax in the amount of $101.69 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of April, 1977, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Executive Secretary