77-SBE-092

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
MIGUEL MONTES)

Appearances:

For Appellant: Miguel Montes, in pro. per.

For Respondent: James T. **Philbin**
Supervising Counsel

O P I N 1'0 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 Miguel **Montes** against proposed assessments of additional personal income tax in the amounts of $74.40, $224.20, and $547.60 for the years 1968, 1969, and 1970, respectively.

Appeal of Miguel Montes

The issue presented by this appeal is whether respondent properly disallowed certain deductions for travel and entertainment expenses claimed by appellant on his 1968, 1969, and 1970 returns.

Appellant, a dentist, is very active in community and civic affairs. During the years in question he was a member of the State Board of Education, a Congressional Advisory Committee on Bilingual Education, and several other charitable organizations,. Appellant was also the president and; a principal stockholder of Montal Systems, Inc. (hereafter Montal), a taxable California corporation organized in 1969 to engage in Mexican-American educational activities.

On his returns for the years in question, appellant reported deductions for travel and entertainment expenses incurred. in connection with his professional and charitable activities. After conducting an audit of the returns, responden-t disallowed a portion of the claimed deductions. A summary of the deductions claimed and respondent's action with respect thereto appears below.

	1968	1969	1970
Travel Expenses			
Claimed	$1,496	$2,457	$4,176
Allowed	748	1,228	2,088
Disallowed	$748	$1,229	$2,088
Entertainment Expenses			
Claimed,	$ 725	$2,018	$4,619
Allowed	725	1,009	1,459
Disallowed	$ 0	$1,009	$3,160

It is well settled that the taxpayer bears the burden of proving he is entitled to claimed deductions. (Welch v. Helvering, 290 U.S. 211 [78 L. Ed. 212](1933); Appeal of Harold J. and Jo Ann Gibson, Cal. St. Bd. of Equal., Oct 6, 1976.) Moreover, section 17296 of the Revenue and Taxation Code expressly provides that "[n]o deduction shall be allowed... for any traveling or entertainment expenses unless substantiated by adequate records or

sufficient evidence which corroborates the taxpayer's own statement." With this background in mind, we turn now to an examination of each category of the deductions in question.

Travel Expenses

The deductions claimed for travel expenses apparently represent alleged expenditures made by appellant- for the operation of his automobile in connection with his business and charitable activities. Appellant asserts that at least 90 percent of the use of his car during the years on appeal was for business or charitable purposes. Of that usage, appellant attributes 40 percent to his dental practice, 30 percent to his activities as president of Montal, and 20 percent to his various charitable activities.

Respondent allowed all of the travel expense deductions which appellant attributed to his charitable activities. Respondent disallowed approximately half Of the deductions attributed to appellant's dental practice on the basis of appellant's failure to substantiate a portion of the expenses and his failure to establish a specific business purpose for a portion of the expenses. Respondent disallowed the entire amount of deductions attributed to appellant's activities as president of Montal on the ground that such expenses were those of the corporation and, therefore, not deductible by appellant.

The record on appeal lacks any evidence of the mileage driven by appellant in connection with his dental practice during the years 1968 and 1970. With respect to the year 1969, the record does contain a detailed account of the mileage driven by appellant for business purposes. However, appellant has failed to explain the method that he utilized to convert the mileage into the corresponding travel expenses reported on his return. Consequently, we are unable to determine whether the expenses reported accurately reflect the substantiated mileage. Under the circumstances, we must conclude that appellant has failed to sustain his burden of proving that respondent's disallowance of the disputed automobile expenses was improper or erroneous.

with respect to the travel expenses which appellant attributed to his position as president of Montal, appellant has asserted three different theories for the deductibility of the expenses. Initially, it was appellant's position that the expenses were deductible as ordinary and necessary expenses of his trade or business. Subsequent to the filing of this appeal, however, appellant asserted that the expenses were deductible either as charitable contributions or as bad debts. For the reasons stated below, it is our opinion that the expenses are not deductible under any of the theories advanced by appellant.

It is a general rule that unreimbursed expenses incurred by a corporate officer on behalf of the corporation are not deductible by the officer on his personal returns. (Kahn v. Commissioner, 26 T.C. 273 (1956); Roy L. Harding, T.C. Memo., June 29, 1970; Appeal of Harry E. and Mildred J. Aine, Cal. St. Bd. of Equal., April 22, 1975.) An exception to the rule is recognized where the corporate officer is expected or required to incur the expenses without reimbursement from the corporation in the course of discharging his executive duties. (See Heidt v. Commissioner, 274 F.2d 25 (7th Cir. 1959); Holland v. United States, 311 F. Supp. 422, 432 (C.D. Cal. 1970); Fountain v. Commissioner, 59 T.C. 696, 708 (1973).) Under such circumstances, the expenses are considered ordinary and necessary expenses of the taxpayer's business as a corporate executive. (Holland v. United States, supra.)

Appellant has offered no evidence to establish that his activities as president of Montal constituted a trade or business. The record fails to indicate whether appellant received any compensation for his services to the corporation, or whether the corporation required him to incur the expenses without reimbursement. Accordingly, we must agree with respondent's determination that the expenses do not represent ordinary and necessary expenses incurred in connection with appellant's trade or business.

Payments made to or on behalf of a corporation may not be classified as charitable contributions unless the recipient corporation has established tax-exempt status under federal or state law as a nonprofit organization

operated exclusively for religious, charitable, or other specified purposes. (Rev. & Tax. Code, §§ 17214, 23708, subd. (d)(2)(B).) Appellant has failed to present any evidence which indicates that Montal had established tax-exempt status during the years on appeal. Therefore, the expenses in question are not deductible as charitable contributions.

Finally, appellant suggests that the travel expenses incurred on behalf of Montal are deductible as bad debts. However, appellant has presented no evidence that the alleged debts arose from a true debtor-creditor relationship based upon an enforceable obligation to pay a fixed sum of money. Therefore, we must conclude that appellant has failed to prove the expenses are deductible as bad debts. (See Appeal of Allen L. and Jacqueline M. Seaman, Cal. St. Bd. of Equal., Dec. 16, 1975.)

Entertainment Expenses

The record on appeal indicates that respondent ultimately disallowed only those entertainment expenses which appellant attributed to his activities as president of Montal. Appellant's contentions in support of the disallowed entertainment expenses are identical to those advanced in support of the travel expenses. Accordingly, on the basis of our analysis with respect to the deductibility of the travel expenses incurred on behalf of Montal, we conclude that appellant has failed to sustain his burden of proving that the disallowed entertainment expenses are deductible.

For the reasons stated, respondent's action in this matter must be sustained.

Appeal of Miguel Montes

O R D E R

I?ursuant 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 protests of Miguel Montes against proposed assessments of additional personal income tax in the amounts of $74.40, $224.20, and $547.60 for the years 1968, 1969, and 1970, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 28thday of June, 1977, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, **Member**

_____, Member

_____, Member