



77-SBE-115

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
FRANCIS L. and MARY J. STEIN }

For Appellants: Francis L. Stein, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
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 Francis L. and Mary J. Stein against proposed assessments of additional personal income tax in the amounts of \$365.67 and \$198.09 for the years 1972 and 1973, respectively.

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The issue for determination is the deductibility of travel and living expenses incurred by Francis L. Stein (hereinafter appellant) while living apart from his family. Certain other deductions claimed by appellant during the appeal years were also disallowed; however, **appellants** have not disputed these adjustments.

Prior to 1972, both appellant and his wife were employed in San Francisco where they maintained their residence. In 1971 appellant was assigned by his employer to Fresno as district manager to service the San Joaquin Valley. Appellant's employer offered to reimburse him for the cost of relocating his family in Fresno. However, his employer refused to reimburse him for commuting expenses or living expenses incurred while in Fresno. Nevertheless, appellant chose to maintain his residence in San Francisco. While in Fresno, appellant stayed in motels and ate his meals in restaurants. Sometime after the appeal years appellant and his family moved to Fresno.

On their 1972 and 1973 returns, appellants deducted \$3,726 and \$800, respectively, as employee business expenses. These amounts represent appellant's costs of commuting between Fresno and San Francisco, and his living expenses while in Fresno. Respondent's disallowance of these **deductions resulted in the** instant appeal.

Deductions for personal, living, or family expenses are specifically disallowed by section 17282 of the Revenue and Taxation Code. However, subdivision (a)(2) of section 17202, allows deductions for ordinary and necessary traveling expenses, including amounts expended for meals and lodging, incurred while the taxpayer is "away from home in the pursuit of a trade or business; ..." These sections are substantially the same as sections 262 and 162(a)(2) of the Internal Revenue Code of 1954. The purpose of the traveling expense deduction is 'to equalize the burden between the taxpayer whose employment requires business travel and the taxpayer whose employment does not. Therefore, expenditures motivated by the personal conveniences of the taxpayer and not required by the exigencies of business do not qualify for the deduction. (peal of Stuart D. and Kathleen Whetstone, Cal. St. Bd. of Equal.; Jan. 7, 1975.) In order to qualify as a deduction, the traveling expenses must be: (1) reasonable and necessary; (2) incurred while the taxpayer is "away **from home;**" and

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(3) directly connected with carrying on the trade or business of- the taxpayer or his employer. (Commissioner v. Flowers, 326 U.S. 465, 470 [90 L. Ed. 2031 (1946)]; Appeal of Stuart D. and Kathleen Whetstone, supra; Appeal of Roy Chadwick, Cal. St. Bd. of Equal., Oct. 7, 1974.)

In recent decisions we discussed the various theories applied by the courts to cases of this sort. (Appeal of Stuart D. and Kathleen Whetstone, supra; Appeal of Roy Chadwick, supra.) In those appeals we noted that the ultimate question for resolution is whether, under all the circumstances, it is reasonable to expect the taxpayer to have moved his permanent residence to the vicinity of his employment. If it is reasonable to expect the taxpayer to have moved, then duplicate living expenses resulting from a failure to move are not deductible as traveling expenses, either on the theory that his "tax home" shifted to the area of his employment, or because his decision to maintain a separate residence was a matter of personal choice and not required by business necessity. (Appeal of Stuart D. and Kathleen Whetstone, supra; Appeal of Roy Chadwick, supra.)

In the instant appeal, Mr. Stein was transferred by his employer from San Francisco to Fresno as a district manager in the San Joaquin Valley. Although Mr. Stein's employer offered to reimburse him for the costs of relocating his family to Fresno, his employer would not reimburse him for his living expenses in Fresno or for his commuting expenses. There is no indication that the transfer was other than permanent. In fact, some time after the years in issue, appellant did move his family to Fresno. Under these circumstances we conclude that it was reasonable to expect appellant to have moved his permanent residence to Fresno, and that his failure to do so was motivated by purely personal considerations. Accordingly, appellant is not entitled to the claimed traveling expense deductions,.

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,

