BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ROBERT F. AND CHARLOTTE R. WEBBER)

For Appellants: Robert J. Kantor
Certified Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code 1/ from the action of the Franchise Tax Board on the protest of Robert F. and Charlotte R. Webber against a proposed assessment of additional personal income tax in the amount of $368.08 for the year 1973. During the course of these proceedings appellants paid the proposed assessment. Therefore, pursuant to section 19061.1 this appeal is treated as an appeal from the denial of a claim for refund.

1/ All references to code sections are to the Revenue and Taxation Code unless the contrary is indicated.

The sole issue for our determination is whether the cost of a specially equipped van constituted a deductible medical expense.

On their 1973 personal income tax return appellants deducted the cost of a van ($6,067) as a medical expense. They similarly deducted the cost of a special tailgate lift ($761) for the van. Appellants noted on the return that the "specially equipped van was needed to transport dependent son with muscular dystrophy to doctors and schools. Son is confined to wheelchair." Respondent allowed the cost of the special tailgate lift as a medical expense deduction but disallowed the remaining deduction for the cost of the van. That action gave rise to this appeal.

Appellants rely on the fact that during the year in question they purchased the van to transport their dependent son, a person afflicted with muscular dystrophy who is confined to a wheelchair. Appellants state that the van was purchased to provide necessary transportation for their son "to doctors, schools, and elsewhere." They allege that the van was specially equipped for the son's needs. In view of these circumstances they contend that the van's cost was a properly deductible medical expense.

Section 17282 states that, except as otherwise expressly provided, no deduction shall be allowed for personal, living or family expenses. Section 17253 provides for the deduction of certain "medical care" expenses. Section 17257 in pertinent part defines the term "medical care" as the amounts paid:

> (1) For the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,
>
> (2) For transportation primarily for and essential to medical care referred to in paragraph (1),...

The above California Code provisions are patterned after sections 213 and 262 of the Internal Revenue Code of 1954. Consequently, it is appropriate that we look to federal interpretations to assist us in the interpretation of the California law. (See Holmes v. McColgan, 17 Cal. 2d 426 (1941).) Moreover, respondent has not adopted regulations specifically relating to section

17257 which defines "medical care." Accordingly, we should obtain guidance by reference to the applicable federal regulations. (Cal. Admin. Code, tit. 18, reg. 19253.)

Section 1.213-1(e)(1)(iii) of the federal Treasury Regulations states that capital expenditures are generally not deductible as medical care expenses. This section is interpreted in Revenue Ruling 70-606, 1970-2, Cum. Bull. 66, which involves a factual situation very similar to the instant case. An individual who was confined to a wheelchair purchased a specially designed automobile. The special features included ramps for entry and exit, rear doors that opened 180 degrees, floor locks to hold wheelchairs in place, and a raised roof giving the required headroom to accommodate wheelchair passengers. The taxpayer paid $6,000 for the vehicle whereas the cost of a comparable automobile of standard design was $4,500. It was held that the taxpayer could only deduct as a medical expense the $1,500 which was attributable to the special design of the automobile. (See also Rev. Rul. 66-80, 1966-1 Cum. Bull. 57 and Wade Volwiler, 57 T.C. 367 (1971).)

In the present case, the van cost $6,067 and a tailgate lift which was added cost an additional $761. Respondent's action in allowing the cost of the lift as a medical expense deduction while disallowing the $6,067 cost of the van is consistent with the authorities cited above.

In deciding an appeal, we are bound by the well settled principle that all deductions are a matter of legislative grace and the taxpayer has the burden of proving he is entitled to the deduction claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 455 [78 L. Ed. 1348] (1934).) Here appellants simply have not established that any portion of the $6,067 capital expenditure constituted an amount paid for "medical care" within the meaning of the applicable statutory provisions. Under the circumstances, we must sustain the action of respondent.

Appeal of Robert F. and Charlotte R. Webber

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Robert F. and Charlotte R. Webber for refund of personal income tax in the amount of $368.08 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of May, 1978, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member