

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BERNARD ROAZEN)

For Appellant: Bernard Roazen, in pro. per.
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 from the action of the Franchise Tax Board on the protest of Bernard Roazen against a proposed assessment of additional personal income tax in the amount of \$109.77 for the year 1973.

Appeal of Bernard Roazen

The issue presented is whether appellant is entitled to a deduction for moving expenses.

Prior to February 5, 1973, appellant resided and was employed in New Mexico. On that date, appellant moved from that state to accept employment in California. He arrived in San Francisco on February 8, 1973, and has continued to reside in California.

Appellant deducted moving expenses in the amount of \$1,244 on his 1973 state personal income tax return that he incurred as a consequence of the interstate move. Respondent disallowed the deduction on the ground that appellant did not receive any reimbursement for his moving expenses.

Appellant contends that subdivision (d) of section 17266 unconstitutionally discriminates against interstate **travelers** by granting the deduction for certain moving expenses where the move is from one residence in California to another in this state, but limiting the deduction in interstate moves to the amount received as reimbursement. He alleges that this provision violates both the equal protection clause and the commerce clause of the federal Constitution.

'Since appellant did not receive any reimbursement from his employer for these moving expenses, this statutory **provision** clearly does not provide for the deduction. (Appeal of Patrick J. and Brenda L. Harrington, Cal. St. Bd. of Equal., Jan. 11, 1978; Appeal of Norman L. and Penelope A. Sakamoto, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Chris T. and Irene A. Catalone, Cal. St. Bd. of Equal., decided this day.)

Because this appeal concerns a deficiency assessment and the only issue raised by appellant brings into question the constitutionality of a state statute, we shall refrain, under the well established policy of this board, from ruling on the constitutional question. (Appeal of Albert E. and S. Jean Hornsey, Cal. St. Bd. of Equal., June 2, 1971; Appeal of Harold and Sylvia Panken, Cal. St. Bd. of Equal.)

This policy is based upon the absence of any specific statutory authority which would allow respondent to obtain judicial review in this instance, and we believe that such review should be available for questions of constitutional importance. (Appeal of C. Pardee Erdman, Cal. St. Bd. of Equal., Feb. 18, 1970.)

Appeal of Bernard Roazen

For the reasons set out above, respondent's action in this matter is sustained.

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 Bernard Roazen against a proposed assessment of additional personal income tax in the amount of \$109.77 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June, 1978, by the State Board of Equalization.

George J. Feeley, Chairman
Richard Klepper, Member
William L. Brown, Member
Joe Dunbar, Member
_____, Member