

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
W. JAY AND M. MARLENE MADSEN)

For Appellants: W. Jay Madsen, in pro. per.

For Respondent: Bruce W. Walker
 Chief Counsel

Jean Harrison Ogrod
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 W. Jay and M. Marlene Madsen against a proposed assessment of additional personal income tax in the amount of \$18.83 for the year 1974.

Appeal of W. Jay and M. Marlene Madsen

The sole issue is whether appellants were entitled to the entire moving expense deduction claimed.

In 1974 appellants moved from Colorado to California. Mr. Madsen's new employer partially reimbursed appellants' moving **expenses**. On their 1974 California personal income tax return, appellants **included** that partial reimbursement in their gross income. They also claimed a deduction of their total moving expenses, including unreimbursed amounts. Respondent allowed the deduction to the extent of appellants' reimbursed moving expenses but disallowed the remainder. That action gave rise to this appeal.

Section.,17266 of the Revenue and Taxation Code allows a taxpayer to deduct certain moving expenses. The deduction is **limited, however**, in cases where **individuals move** into or out 'of California, as appellants did. That limitation is contained in subdivision (d) of section 17266, which provides in relevant part:

In the case of an individual whose former residence was outside this state and his new place of **residence is** located within this state . . . the deduction allowed by this section shall be allowed only if any amount received as payment for or reimbursement of expenses Of moving from one residence to another residence is includable in gross income as provided by Section 17122.5 and the amount of deduction shall be limited only to the amount of such payment or reimbursement or the amounts specified **in** subdivision (b), whichever amount is the lesser.

In a number of **prior** appeals we have held that a taxpayer moving into or out of California, **and receiving** no reimbursement of his moving expenses, is not entitled to any deduction under the above quoted'limitation.

(Appeal of Chris T. and Irene A. Catalone, Cal. St. Bd. of Equal., June 29, 1978; Appeal of James G. Evans, Cal. St. Bd. of Equal., Dec. 6, 1977; Appeal of Norman L. and Penelope A. Sakamoto, Cal. St. Bd. of Equal., May 10, 1977.) In the instant case appellants did receive partial reimbursement, which they included in their gross income for 1974. Respondent allowed their moving expense deduction to the extent of such reimbursement.' That was the maximum deduction to which they were entitled under **the** provisions of section 17266. Respondent's action in this matter therefore must be sustained.

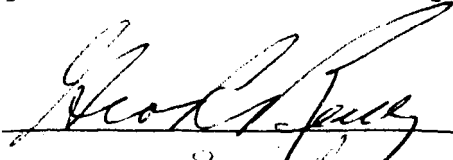
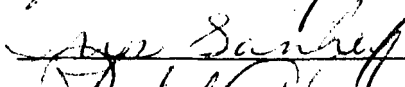

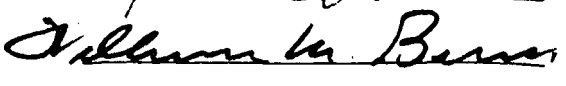
Appeal of W. Jay and M. Marlene Madsen

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 W. Jay and M. Marlene Madsen against a proposed assessment of additional personal income tax in the amount of \$18.83 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of October , 1978, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member