BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
MELVIN MOULTRY)

For Appellant: Melvin Moultry, 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 Melvin Moultry against a proposed assessment of additional personal income tax in the amount of $60.00 for the year 1971..

The sole issue for determination is whether appellant has met the burden of establishing that a federal determination relied upon by respondent in issuing a proposed assessment was erroneous.

Appellant's 1971 personal income tax return was audited by the Internal Revenue Service. As a result of the audit, the federal authorities disallowed $824 of a total of $1,510 in automobile expenses claimed as an employee business expense deduction, and disallowed all of appellant's claimed itemized deductions. The disallowance of all items was based on a lack of substantiation. Appellant signed the federal audit report thereby consenting to the adjustments contained in the report.

Since the adjustments were equally applicable under state law, respondent issued the proposed assessment in question which was based entirely on the adjustments contained in the federal audit report. Since all of appellant's itemized deductions were disallowed, respondent allowed the standard deduction. Appellant protested, arguing that he could substantiate his deductions and contending that he had intended to file a claim for refund at the federal level, but that he had inadvertently allowed the statute of limitations to lapse. Appellant's protest was denied and this appeal followed.

Section 18451 of the Revenue and Taxation Code provides, in part, that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a determination by the Franchise Tax Board based upon a federal audit is presumed to be correct and the burden is on the taxpayer to overcome that presumption. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414] (1949); Appeal of Willard D. and Esther J. Schoellerman, Cal. St. Bd. of Equal., Dec. 17, 1973.

In an effort to carry his burden with respect to his claimed itemized deductions appellant submitted copies of numerous receipts and checks. Many of the checks, however, were made out to "cash" or to unidentified payees. Others were for nondeductible items such as apartment rent. In any event, the total of the checks and receipts were less than the $2,000 standard deduction which respondent allowed. Thus, we conclude that appellant's itemized deductions were properly disallowed.

With respect to appellant's claimed employee business expense deduction for automobile expense, we first note that $686 was allowed as a deduction. On his

state return appellant reported that he drove a total of 12,000 miles during 1971. However, a review of the odometer readings listed on the various repair invoices submitted by appellant indicates that 15,000 miles is a more accurate estimate of the total miles driven during 1971. The only tangible evidence submitted by appellant in support of the business mileage driven is a letter from one of his former employers. The letter states that appellant did incur unreimbursed automobile expenses in the performance of his employment during March, April, May and June of 1971. The letter also states that appellant was reimbursed $153.96 for a total of 1,373 miles driven during July and August. It would not be unreasonable to conclude that, if appellant was required to drive 1,373 miles during July and August, he was required to drive twice that amount, or 2,746 miles, during the previous four months when he was performing the same services.

During January, February and March of 1971 appellant was employed at two jobs, requiring him to drive from the first job to the second job. The expenses so incurred would, of course, be deductible. (See Joseph H. Sherman, Jr., 16 T.C. 332 (1951); Steinhort v. Commissioner, 335 F.2d 496, 504 (5th Cir. 1964).) The first job was in Compton while the second job was in El Segundo. The distance between the two is approximately 6 miles. If appellant worked six days a week, as he claimed, he would have driven approximately 460 miles during the period and the expenses associated therewith would be deductible.

There is no evidence with regard to the mileage driven for business purposes during the last four months of the year except for appellant's unsubstantiated general statements. Therefore, we can conclude that appellant's total mileage driven for business purposes during 1971 was 4,579 miles (1,373 + 2,746 + 460) or approximately 30 percent of his total mileage.

Appellant has submitted receipts evidencing $2,981.92 in repairs, insurance and other automobile expenses which he incurred during 1971. Of this amount, however, $1,947.27 was for the purchase and installation of a new engine which should have been capitalized. (See Doris Jones, ¶52,164 P-H Memo. T.C. (1952).) He also estimated that he spent $487.50 for gasoline and that annual depreciation was $600.00. (Allowable depreciation, as adjusted for the capitalized cost of the new engine would be approximately $640.) Total expenses which appellant has established by receipts or reliable estimate are $2,162.15. Of this amount, 30 percent, or $648.64

was attributable to employee business expense. Thus, it is readily apparent that the $686 allowed by respondent was more than adequate.

For the reasons set out above, we must conclude thatappellant has failed to show that the federal determination relied upon by respondent was erroneous. Accordingly, respondent's action must be 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 Melvin Moultry against a proposed assessment of additional personal income tax in the amount of $60.00 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of December , 1978, by the State Board of Equalization.

, Chairman

, Member

, Member

, Member

Member