79-SBE-034

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal Of)
)
TERRY A. AND JEANNE M. BURDYSHAW)

For Appellants: Jeanne M. Burdyshaw, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Jacqueline W. Martins
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 Terry A. and Jeanne M. Burdyshaw aqainst a proposed assessment of additional personal income tax in the amount of $70.76 for the year 1976.

The question presented is whether respondent properly disallowed appellants' deduction of expenditures for child care services.

Appellants, husband and wife, were both employed during the taxable year 1976. Their adjusted gross income for that year was $20,212.00. They have one minor child for whom they secured child care services in 1976, at a cost Of $1,252.00, which they claimed as a deduction on their 1976 joint income tax return. Respondent disallowed the deduction on the grounds that appellants did not qualify for the deduction under the statutory formula set forth in Revenue and Taxation Code section 17262. Appellants' protest against this action was denied and this appeal followed.

Section 17262, in effect in the appeal year, provided as follows, in relevant part:

> (d) If the adjusted gross income of the taxpayer exceeds twelve thousand dollars ($12,000) for the taxable year during which the expenses are incurred, the amount of the deduction shall be reduced by fifty cents ($0.50) for each one dollar ($1) of such income above twelve thousand dollars ($12,000). For purposes of the preceding sentence, if the taxpayer is married during any period of the taxable year, there shall be taken into account the combined adjusted gross income of the'taxpayer and his spouse for such period.

When this formula was applied to appellants' circumstances, their claimed deduction was reduced to zero.

The law is unquestionably clear: therefore, we must conclude that appellants' claimed deduction does not lie within the terms of the applicable statute and was properly disallowed. (See New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348] (1934); see also Appeal of James B. and Katherine M. Beckham, Cal. St. Bd. of Equal., June 28, 1977.)

Appellants' primary objection to thisresult appears to be based on their belief that the law is unfair because it does not benefit taxpayers in their income bracket. However, although we recognize the burdenthe law may impose on appellants, their disagreement should be directed to the Legislature, which formulates the law. We are bound to enforce section 17262 as it is plainly written. (See Appeal of Chester A. Rowland, Cal. St. Bd. of Equal., Oct. 21, 1975.)

Accordingly, we conclude that respondent's action in this matter must be sustained.

Appeal of Terry A. and Jeanne M. Burdyshaw

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 Terry A. and Jeanne M. Burdyshaw against a proposed assessment of additional personal income tax in the amount of $70.76 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of February, 1979, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

_____, Member