BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
PIERCE BARKER AND CAROL FROST)

For Appellants: Pierce Barker and
Carol Frost, 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 Pierce Barker and Carol Frost against a proposed assessment of additional personal income tax in the amount of $234.45 for the year 1975.

The issue presented is whether appellants were entitled to a moving expense deduction in 1975.

Appellants now reside in North Woodstock, New Hampshire. In the joint California personal income tax return which they filed for 1975, appellants claimed a deduction in the amount of $3,083.14 for moving expenses incurred when they moved from California. They received no reimbursement of those expenses. Respondent disallowed the moving expense deduction claimed, and this appeal followed.

Section 17266 of the Revenue and Taxation Code allows a deduction for certain designated moving expenses. Subdivision (d) of that section limits the deduction where such expenses are incurred in connection with an interstate move by providing in relevant part:

> In the case of an individual . . . whose former residence was located in this state and his new place of residence is located outside 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 the 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.

Here appellants moved from California to a new residence located outside this state. They were not reimbursed for their moving expenses; In numerous prior opinions we have held that, absent reimbursement of the expenses of an interstate move, a taxpayer is not entitled to any moving expense deduction.' (See, e.g., Appeal of Thomas A. and Jo Merlyn Curdie, Cal. St. Bd. of Equal., June 29, 1978; 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.)

Appellants appear to concede that reimbursement is required under the statute. They urge, however, that they were unaware of that requirement when they filed their 1975 return and they believe such a requirement is unreasonable and constitutes an improper deviation from federal income tax law. They also contend that respondent's instructions on this point were misleading.

Finally, appellants argue that since respondent initially allowed the refund which they claimed on their 1975 return, they should not be penalized by being required to pay interest on the deficiency later assessed. All of these contentions were considered and rejected by this board in the appeal decisions cited in the preceding paragraph. For the reasons stated therein, we must similarly reject them here.

Accordingly, respondent's action in this matter 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 Pierce Barker and Carol Frost against a proposed assessment of additional personal income tax in the amount of $234.45 for the year 1975, 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