BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CARROLL J?. PAGE)

Appearances:

For Appellant: Carroll P. Page, in pro. per.

For Respondent: Jon Jensen
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 Carroll P. Page against proposed assessments of additional personal income tax issued against Carroll P. and Patricia A. Page in the amount of $267.44 for the year 1971, and against Carroll P. Page in the amount of $1,026.74 for the year 1972.

The issues presented for decision are:. (1) whether certain travel and living expenses incurred by appellant in 1971 and 1972 while away from his permanent residence were deductible , a:nd (2) whether in those years appellant was entitled to greater business expense deductions relating to his bookkeeping a:nd tax preparation service than the amounts allowed by respondent.

I. TRAVEL AN'D LIVING EXPENSES

Appellant has had a varied career in the electronics and industrial engineering fields. For several years prior to March 1970, he was employed as a marketing manager by Sylvania Electronic Systems in Mountain View, California. At that time his wife, Patricia, worked for American Airlines at the San Francisco International Airport. They maintained their permanent residence in Sunnyvale, California.

In March of 1970 appellant was laid off by Sylvania and, in that same month , he accepted employment with Avco Corporation (Avco) as an area sales manager in its Electronics Systems Division in Los Angeles, California. For the next two years and nine months, appellant commuted to Los Angeles on Mondays and returned to join his wife at their Sunnyvale home on Fridays. While in Los Angeles, appellant stayed in motels and ate his meals in restaurants. Meanwhile, his wife remained in the employ of American Airlines at the airport in San Francisco. Appellant and his wife were divorced in December 1972 and appellant then established a permanent residence in Los Angeles.

'In his California personal income tax returns for 1971 and 1972, appellant claimed employee business expense deductions in the amounts of $1,767.00 and $3,063.00, respectively, representing his unreimbursed travel expenses incurred in commuting between Sunnyvale and Los Angeles and his living expenses while in Los Angeles. Respondent disallowed those deductions on the ground that appellant's tax home was in Los Angeles in.1971 and 1972, and the expenses in question were thus not incurred "while away from home."

Appellant alleges that when he was laid off by Sylvania he was unable to find other employment in the bay area, and he took the job with Avco in Los Angeles in order to avoid being unemployed. 'He contends that he continued to live in Sunnyvale, California, during the appeal years because his wife could not obtain a transfer and she therefore would have had to give up her job if they had moved to Los Angeles. He argues that since she had worked for American Airlines for over ten years, her employment was much more permanent than

his position with Avco, in view of the instability of the aerospace industry at the time. He adds that the correctness of this contention is borne out by the fact that he was laid off by Avco in June 1973, six months after he moved to Los Angeles. Appellant also states that had he moved during the appeal years he would have sustained a substantial financial loss, since he would have received no reimbursement from Avco of his moving expenses or the costs of establishing a new residence in Los Angeles.

Subdivision (a)(2) of section 17202 of the Revenue and Taxation Code allows the deduction of ordinary and necessary traveling expenses, including reasonable amounts expended for meals and lodging, incurred "while away from home in the pursuit of a trade or business; ...". Section 17282 of the same code, however, specifically disallows deductions for personal, living, or family expenses. These provisions are substantially identical to sections 262 and 162(a)(2) of the Internal Revenue Code of 1954. The purpose of the traveling expense deduction is to equalize the burdens of the taxpayer whose employment requires business travel and the taxpayer whose employment does not. (James v. United States, 308 F.2d 204 (9th Cir. 1962).) Therefore, expenditures motivated by the personal conveniences of the taxpayer and not required by the exigencies of business do not qualify for the deduction. (See, e.g., Ford v. Commissioner, 227 F.2d 297, 299 (4th Cir. 1955).)

To be deductible, traveling expenses must be: (1) reasonable and necessary; (2) incurred by the taxpayer "while away from home"; and (3) directly connected with carrying on the trade or business of the taxpayer or his employer. (Commissioner v. Flowers, 326 U.S. 465, 470 [90 L.Ed. 2031 (1946).) In several earlier decisions we have discussed the various approaches courts have taken in applying these criteria to facts similar to those in the instant appeal. (Appeal of Stuart D. and Kathleen Whetstone, Cal. St. Bd. of Equal., Jan. 7, 1975; Appeal of Roy Chadwick, Cal. St. Bd. of Equal., Oct. 7, 1974; see also Appeal of Francis L. and Mary J. Stein, Cal. St. Bd. of Equal., Aug. 16, 1977.) In those decisions we have observed that the ultimate question for resolution is whether, under all the circumstances, it is reasonable to expect the taxpayer to have moved his permanent residence to the vicinity of his employment. If it is reasonable to expect him to make such a move, then duplicate living expenses resulting from his failure to move are not deductible as travel expenses, either on the theory that his "tax home" shifted to the area of his employment, or because his decision to maintain a separate residence was a matter of personal choice and not required by business necessity.

With those thoughts in mind, we note that in March of 1970 appellant accepted a responsible position with Avco Corporation and, thereafter, his principal post of duty was located in Los Angeles. Although appellant has emphasized the general instability of employment in the aerospace industry at the time, there is nothing to indicate that he was hired by Avco on a temporary basis and, in fact, his employment with that company continued until June 1973, a period of three and one-quarter years. Under those circumstances, we believe it was reasonable to expect him to move his permanent residence to Los Angeles when he commenced work for Avco. Furthermore, the reasons he has given for his failure to do so are primarily personal in nature. There is evidence in the record indicating that appellant's marriage was in the process of breaking up during the appeal years: At the protest hearing, appellant advised respondent that his wife had refused to move to Los Angeles, and that he commuted back to Sunnyvale on weekends in an attempt to save their marriage.

After reviewing all of the facts, we conclude that appellant's continued maintenance of a permanent residence in Sunnyvale after commencement of his employment in Los Angeles was motivated by personal considerations rather than business necessity. That being so, the duplicate living costs and the travel expense which he incurred were not directly related to the pursuit of- his employer's business, as is required under the law. Conseyucntly, those amounts were not deductible as business expenses under subdivision (a)(2) of section 17202 of the Revenue and Taxation Code.

II. TAX PREPARATION SERVICE EXPENSES

During the appeal years, appellant operated a part-time bookkeeping and income tax preparation service out of his home in Sunnyvale, California. His gross income from that business was $647.50 in 1971and $727.50 in 1972. In his returns for those years appellantclaimed deductions in the amounts of $1,506.67 and $1,683.40, respectively, for expenses allegedly incurred in connection with the use of his home in the business. Respondent has allowed those expense deductions to the extent of appellant's gross income from the business in each year and has disallowed the remainder ($859.17 for 1971 and $955.90 for 1972), on the ground that appellant has failed to establish that those additional expenses were business-related.

It is axiomatic that tax deductions are a matter of legislative grace, and the burden is on the taxpayer to show he is entitled to deductions claimed. (New Colonial Ice Co. v. 'Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934); Deputy v. du Pont, 308 U.S. 488 [84 L.Ed. 416] (1940).) Appellant has

offered no evidence to substantiate the disallowed portion of his claimed business expense deductions relating to his bookkeeping and tax preparation service. His sole contention is that although that business operated at a loss during the appeal years, it did make money in 1975, proving that he was conducting the business for profit. Respondent does not dispute appellant's profit motive. It argues, however, and we must agree, that appellant has failed to carry his burden of proving that he is entitled to any greater business expense deductions relative to his bookkeeping and tax preparation service than those already allowed by respondent.

For the reasons stated above, 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 Hoard on the protest of Carroll P. Page against proposed assessments of additional personal. income tax issued against Carroll P. and Patricia A. Page in the amount of $267.44 for the year 1971, and against Carroll P. Page in the amount of $1,026.74 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of May, 1979, by the State Hoard of Equalization.

Chairman

Member

Member

Member

Member