



79-SBE-148

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JEFF W. AND KUM C. WEBER)

For Appellants: Jeff W. Weber, in pro. per.
For Respondent: James C. Stewart
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 Jeff W. and Kum C. Weber against a proposed assessment of additional personal income tax in the amount of \$142.70 for the year 1976. In conjunction with

'Appeal of Jeff W. and Kum C. Weber

this appeal, appellants paid the proposed assessment of tax. Accordingly, pursuant to section 19061.1 of the Revenue and Taxation Code, the appeal will be treated as an appeal from the denial of the claim for refund.

The issue presented is whether appellants are entitled to a deduction for educational expenses **under** section 17202, subdivision (a), of the Revenue and Taxation Code,

Appellants, Jeff W. and Kum C. Weber, filed a joint personal income tax return for 1976, claiming a deduction of \$2,846 for educational expenses. **Appellant** Jeff W. Weber is a police sergeant with the San Diego Port District. In a statement attached to the 1976 tax return, appellant stated he had attended college and **obtained** his degree in order to attain the rank of captain and to render better service to his department. He stated that captain is the next higher position available after sergeant and that all of his competitors have obtained or are obtaining college degrees. Appellant also stated that his present administration is emphasizing education now more than it has in the past,

Respondent disallowed the claimed deduction on the ground that the education was not undertaken primarily for the purpose of maintaining or improving skills required in his employment. Appellants protested the additional assessment, but failed to respond to respondent's request for any information as to the courses taken which directly related to maintaining or improving skills required in his employment. After reconsideration of the matter, respondent affirmed the proposed assessments and this appeal followed.

In a written statement to this board, appellant stated his degree, in addition to the reasons above, would enable him to meet the requirements of a professional certification program established by his department. Appellant also provided a copy of an inter-staff memorandum which defines the educational and police training and experience requirements needed to qualify for a professional certificate.

The deductibility of educational expenses is governed by section 17202, subdivision (a), of the Revenue and Taxation Code. During the year under appeal, the aforementioned code section was construed by regulation 17202(e), title 18, California Administrative Code, **to** include a taxpayer's education expense if the expense is primarily for the purpose of: (1) Maintaining or improving skills required by the taxpayer in his employment or other trade

Appeal of Jeff W. and Kum C. Weber

or business, or (2) **Meeting** the express requirements imposed by taxpayer's employer for the retention of taxpayer's **salary**, status or employment.

Section 162 of the Internal Revenue Code is identical to California's section 17202. Under the **circumstances**, federal precedents are entitled to considerable weight when construing state law. (Meanley v. McColgan, 49 Cal. App. 2d 203 [121 P.2d 45] (1942).)

Appellant has the burden of proving that the education was undertaken in order to maintain or improve skills required in his employment, or to meet the express requirements of his employer to retain his employment, status, or rate of compensation. (James A. Carroll, 51 T.C. 213 (1968); Richard N. Warfsman, ¶ 72,137 P-H Memo. T.C. (1972).) Here he contends that his education allowed him to qualify for a professional certificate and to compete for the rank of captain with other sergeants who have obtained or are obtaining their degrees.

In our opinion, appellant has failed to sustain his burden of proof and establish a sufficient nexus between his educational expenditures and his **employment**. (Arthur P. Schwartz, 69 T.C. 877 (1978).) He has not presented any **evidence** as to the specific courses taken which would indicate his education improved or maintained his job skills. Neither has appellant introduced any evidence that his education was undertaken to meet the express requirements of the police department. The inter-staff memorandum, the only evidence appellant presented, does not state or imply that a college education is required for **appellant's** employment, but describes only a general professional certification program established by the department. We cannot speculate about the connection between employment skills and the education undertaken and therefore must conclude that the education was not required for appellant's 'employment.

In addition, appellant's statement that he incurred the expenses to obtain an advancement is another reason to disallow the deduction. Federal courts have held that the expense of education obtained in order to acquire a new position or increase one's remuneration in a position already held is not a deductible business expense. (Knut F. Larson, 15 T.C. 956 (1950); John P. Samford, ¶ 70,258 P-H Memo. T.C. (1970).) In Samford, the **educational** expense deduction was denied a general building contractor for expenses incurred in attending architectural school. Here, as in Samford, appellant's purpose was to obtain a new and better position with his employer and such courses were not required for the job.

Appeal of Jeff W. and Kum C. Weber




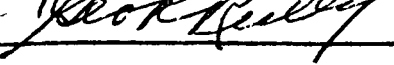
Based on the record before us, appellants have failed to prove that their deduction for educational expenses met the requirements of section 17202, subdivision (a). Accordingly, we must sustain respondent's action in this matter.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Jeff W. and Kum C. Weber for refund of personal income tax in the amount of \$142.70 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of August, 1979, by the State Board of Equalization.

 _____, Chairman
 _____, Member
 _____, Member
 _____, Member
_____, Member