BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ALFRED B. SNOW, JR.)

For Appellant: Alfred B. Snow, Jr., in pro. per.

For Respondent: James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Alfred B. Snow, Jr., against a proposed assessment of additional personal income tax in the amount of $269.92 for the year 1975.

The issue for determination is whether respondent properly disallowed a portion of appellant's claimed moving expense deduction.

Appellant moved to California from Texas in February 1975. In moving, appellant incurred moving expenses in the total amount of $7,553.94. His employer either paid orreimbursed him for all of the moving expenses. In his part-year resident return appellant included the entire amount paid or reimbursed by his employer in his gross income and claimed an, equivalent amount as a moving expense deduction. Of the total amount deducted, $5,001.05 represented amounts expended for pre-move travel, temporary living expenses at the new location, and expenses incident to the sale of appellant's former residence.

Respondent disallowed $2,501.05 of the aforementioned $5,001.05 on the basis that subsection (b) (3) (A) of section 17266 of the Revenue and Taxation Code limited the deduction for these expenses to $2,500.00. A proposed assessment reflecting this adjustmentwas issued stating that the reason for the partial disallowance of the moving expense deduction was the general rule limiting such deductions to the lesser of the amount of the reimbursement or the amount of expenses actually incurred when the move was from outside the state. The proposed assessment failed to include a statement with respect to the $2,500.00 limitation. However, during the course of these proceedings, appellant was advised of the correct reason for the disallowance.

Section 17266 of the Revenue and Taxation Code allows a deduction for designated moving expenses subject to certain limitations. In the case of interstate moves, subsection (d) provides 'that the deduction is allowable only if any amount received as reimbursement is included in income and limits the deduction to the smaller of the reimbursement included in income or the actual expense incurred.' For the year in issue, subsection (b)(3)(A) further limited the deduction for pre-move travel expenses, temporary living expenses in the new location, and expenses related to the sale, purchase or lease of a qualified residence to $2,500.00.

Since the moving expenses deducted by appellant did not exceed the amount of moving expense reimbursement included in his gross income, the limitation contained in subsection (d) is not applicable. However, of the total amount deducted, $7,553.94, $5,001.05 was incurred for pre-move travel, temporary living expenses at the new location, and expenses incident to the sale of appellant's former residence. Subsection (b) (3)(A) limited the deductibility of these particular expenses to $2,500.00. In view of this statutory limitation, it would appear that respondent properly disallowed the excess claimed over $2,500.00, or $2,501.50.

In support of his right to claim the deduction appellant contends that he was advised by a representative in respondent's Oakland office that his moving expense deduction was correct as claimed on his return. This argument is in the nature of estoppel, an equitable principle which will only be evoked against the government where the case is clear and the injustice great. (United States Fidelity and Guaranty Co. v. State Board of Equalization, 47 Cal. 2d 384, 389 [303 P.2d 1034] (1956).) We have refused to invoke estoppel in previous cases where taxpayers understated their tax liability on their returns in alleged reliance on erroneous statements made by employees of respondent. (Appeal of Virgil E. and Izora Gamble, Cal. St. Bd. of Equal., May 4, 1976; Appeal of Richard W. and Ellen Campbell, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Tirzah M. G. Roosevelt, Cal. St. Bd. of Equal., May 19, 1954.) For the reasons set forth in those decisions we must similarly refuse to invoke estoppel against respondent in this case.

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,

Appeal of **Alfred B. Snow, Jr.**

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 'Alfred B. Snow, Jr.! against a proposed assessment of additional, personal **income tax** in the amount of $269.92 for the year 1975, be and the same'is hereby sustained.

Done at Sacramento, California, this **11th day** of December , 1979, by the State **Board of** Equalization.

_____, **Chairman**

_____, Member

_____, Member

_____, Member

_____, Member