

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
James N. Harger) No. 171249
)
)

Representing the Parties:

For Appellant: James N. Harger¹

For Respondent: Renel A. Sapiandante, Tax Counsel

Counsel for Board of Equalization: Charles D. Daly, Tax Counsel III

OPINION

This appeal is made pursuant to section 19045² of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of James N. Harger against proposed assessments of additional personal income tax in the amounts of \$3,535 and \$3,587 for the years 1997 and 1998, respectively. The question presented is whether appellant has shown that he is entitled to a charitable deduction with respect to a residential structure allegedly donated by him to charity.

¹ Although respondent's assessments in this matter were issued against both appellant and his wife, she apparently has not chosen to become a party to the instant appeal. For the sake of convenience, the term "appellant" will sometimes be used here to refer to both appellant and his wife.

² Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

According to statements by appellant at the hearing in this matter, appellant is both an engineer and a developer. On his California resident tax return for 1997, appellant claimed a charitable deduction for a contribution to the Watts 13 Foundation (Watts 13).³ Watts 13 was formed in 1965 after the disturbances in the Watts area of Los Angeles for the purpose of relieving poverty in that area and was qualified during the appeal years as a tax-exempt organization under Internal Revenue Code (IRC) section 501(c)(3) and the corresponding statute in California. Appellant's alleged contribution at issue here consisted of cash in the amount of \$4,700 and a residential structure that appellant stated on Form 8283 attached to his 1997 federal tax return had a value of \$85,800.

Watts 13 acknowledged on Form 8283 that it had received the allegedly donated property on August 6, 1997. In addition, Mr. L. Dale Wood certified on the same form that he was an appraiser who was qualified to appraise the allegedly donated property. In his appraisal, also dated August 6, 1997, Mr. Woods certified that he had inspected a single-family residence located in Manhattan Beach, California, and that he had determined through the "reproduction cost approach" that the value of the "structure only" was \$85,800. It appears undisputed that, after August 6, 1997, the appraised structure was removed in some manner from its lot in Manhattan Beach and that appellant built a much more expensive home on that lot.

Upon audit, respondent issued Notices of Proposed Assessment (NPA's) on June 18, 2001, that disallowed the claimed charitable deduction for the residential structure but did not disallow the claimed deduction for appellant's cash donation. Respondent affirmed its NPA's in Notices of Action (NOA's) that were dated April 25, 2002. The Internal Revenue Service (IRS) had apparently been auditing Watts 13 and some of its donors during this period and revoked the tax-exempt status of Watts 13 on February 20, 2001. Respondent correspondingly revoked the tax-exempt status of Watts 13 during 2002.

Respondent's basic position at audit, during protest, and on appeal is that appellant's donation of the residential structure lacked charitable substance and was identical to illegitimate transactions involving Watts 13 and other taxpayers similarly situated to appellant. Respondent alleges that although Watts 13 was originally a legitimate charity, it had abandoned its charitable endeavors in Watts and become a means of obtaining cash from homeowners in wealthier areas in exchange for supporting improper tax deductions by those taxpayers for donations of homes that never actually occurred. Respondent states that it has analyzed many appraisals done by Mr. Wood and has information that Mr. Wood was aware that the structures allegedly donated to Watts 13 were instead demolished in preparation for the donors' rebuilding projects.

³ Appellant carried forward a part of the claimed charitable deduction to 1998.

Distilling earlier formulations of its position, respondent's primary contention on appeal is that appellant is not entitled to a charitable deduction for his alleged donation of a residential structure because appellant has not shown that he actually delivered the residential structure to Watts 13. Respondent alleges that appellant instead engaged Odle & Son Construction ("Odle") to demolish the residential structure. Respondent alleges further that appellant provided Watts 13 with cash in the amount of \$4,700, for the benefit of its employees rather than for any charitable purpose, in exchange for inaccurate documentation from Watts 13 supporting an improper tax deduction by appellant in the amount of \$85,800. In the alternative, respondent contends that appellant is not entitled to a charitable deduction of any amount because even if appellant delivered scraps of the residential structure to Watts 13, appellant has not shown that the scraps had any salvage value.

In support of his contention that he is entitled to a charitable deduction of \$85,800 for donating a residential structure to Watts 13, appellant relies heavily upon the acknowledgment by Watts 13 on Form 8283 that it received the allegedly donated residential structure on August 6, 1997. Appellant also relies upon a donation receipt from Watts 13 of the same date. In addition, appellant alleged at the hearing that, after August 6, 1997, he observed on his way home from work the disassembling of the residential structure into sections in preparation for its removal from his lot and reassembly elsewhere. Appellant also alleged at the hearing that he attempted several times to learn from Watts 13 the location at which the residential structure was reassembled but was unsuccessful in obtaining that information. Appellant denies that he entered into an arrangement with Mr. Wood to provide a bogus appraisal for a residential structure that was actually to be demolished rather than donated to Watts 13.

In addition, appellant relies heavily upon a letter to the Board from Odle. Appellant argues that the letter establishes that a permit obtained by Odle for appellant from Manhattan Beach was a permit to remove the residential structure, even though Manhattan Beach required such a permit to be in form of a "demolition permit." Appellant also argues that the letter establishes that Odle's only other role after obtaining the permit was to act as a general contractor in preparing appellant's lot for his home after Watts 13 had removed the residential structure. Finally, appellant takes the position that respondent should not be permitted to disallow his claimed charitable deduction because the IRS had recently agreed with another taxpayer that a donation of a residential structure to Watts 13 qualified for a charitable deduction.

Section 17201 incorporates by reference IRC section 170. IRC section 170(a) permits the deduction of a charitable contribution, payment of which is made during the taxable year. IRC section 170(c)(2) defines, in pertinent part, a charitable contribution as a contribution to, or for the use of, a foundation organized exclusively for charitable purposes, no part of the

net earnings of which inures to the benefit of any private shareholder or individual. One of the essential elements of a charitable contribution for purposes of IRC section 170 is delivery by the donor to the donee of the subject matter of the gift or of the most effectual means of commanding dominion over it. (*Bragg v. Commissioner*, 1993 RIA TC Memo ¶93,479.) Whether delivery has occurred is a question of fact. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1999) 73 Cal.App.4th 338, 359-360.)

It is well established that a presumption of correctness attends respondent's determination of fact and that an appellant has the burden of proving such determinations erroneous. (*Appeals of George H. and Sky Williams, et al.*, 82-SBE-018, Jan. 5, 1982.) This presumption is a rebuttable one and will support a finding only in the absence of sufficient evidence to the contrary. (*Appeals of George H. and Sky Williams, et al., supra.*) Respondent's determinations cannot, however, be successfully rebutted when the taxpayer fails to present credible, competent, and relevant evidence as to the issues in dispute. (*Appeals of George H. and Sky Williams, et al., supra.*) This Board has held that neither respondent nor the Board is bound to adopt the conclusion that reached by the IRS in any particular case, even when that determination results from a detailed audit. (*Appeal of Raymond and Rosemarie J. Pryke*, 83-SBE-212, Sept. 15, 1983.)

We agree with respondent's primary contention and disagree with appellant's contention. First, we conclude that the documentation from Watts 13 purportedly showing that appellant delivered the residential structure to Watts 13 on August 6, 1997, is not credible evidence, by itself, of delivery in view of the activities by Watts 13 that apparently resulted in the revocation of its tax-exempt status. In addition, we conclude that appellant's statement that he observed the "disassembling" of the residential structure in preparation for its removal and reassembly elsewhere is too self-serving to be credible. We also note that if appellant had made such an observation, his background in construction would probably have resulted in his recognizing the name of the construction firm that was responsible for the disassembly and removal of the residential structure. In that event, appellant could have gotten in touch with that firm and obtained the location to which the residential structure was moved. Such information would seemingly have provided the "best evidence" that appellant had actually delivered the residential structure to Watts 13.

With regard to the letter from Odle, the underlying document discussed in the letter is entitled "Building Permit Worksheet Community Development Department." In the space on the document entitled "Contractor," Odle entered its name. In the space on the document entitled "Description of Job," Odle entered "Demo Existing SFR." In our view, the most straightforward reading of those entries is that Odle was obtaining a permit on behalf of appellant to demolish appellant's single family residence. Appellant takes the position that such a straightforward reading is not accurate because Manhattan Beach does not issue "removal

permits” and allows the removal of a home from its lot only through the mechanism of a “demolition permit.” However, appellant has not provided such evidence as an affidavit from an official of Manhattan Beach that might persuade us that his position is correct. With regard to appellant’s position that his claimed charitable deduction should not be disallowed because the IRS has recently agreed with another taxpayer that that a donation of a residential structure qualified for a charitable deduction, *Pryke* makes clear that we are not compelled to follow such a federal determination if we disagree with it.

In view of the foregoing, we conclude that appellant has not shown that respondent’s determination that appellant did not deliver the residential structure at issue to Watts 13 is incorrect. As a result, we further conclude that appellant has not shown that he is entitled to a charitable deduction with respect to a residential structure allegedly donated by him to charity. Because appellant has not even alleged that scraps of the residential structure were delivered to Watts 13, we need not discuss respondent’s alternative contention.

Accordingly, respondent’s action must be sustained.

ORDER

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 19047 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of James N. Harger against proposed assessments of additional personal income tax in the amounts of \$3,535 and \$3,587 for the years 1997 and 1998, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of May 2003, by the State Board of Equalization, with Board Members Ms. Carole Migden, Mr. Claude Parrish, Mr. Bill Leonard, Mr. John Chiang, and Ms. Marcy Jo Mandel present.

_____ Carole Migden _____, Chairwoman

_____ Claude Parrish _____, Member

_____ Bill Leonard _____, Member

_____ John Chiang _____, Member

_____ *Ms. Marcy Jo Mandel _____, Member

* For Steve Westly per Government Code section 7.9.