

BEFORE THE STATE BOARD OF EQUALIZATION  
OF **THE** STATE OF CALIFORNIA

In the Matter of the Appeals of) Nos. **81A-1130** and  
EMMANUEL N. MBA, M.D., INC. ) **84A-318-MW**

**Fdr** Appellant: Ruben Kitay  
Certified Public Accountant

For Respondent: John A. Stilwell, Jr.  
Counsel

O P I N I O N

This appeal is made pursuant to section **25666<sup>1/</sup>** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Emmanuel N. Mba, M.D., Inc., against proposed assessments of additional franchise tax plus penalties in the total amounts of **\$4,942.00, \$8,338.00, and \$4,355.40** for the income years ended September **30, 1976, September 30, 1977, and September 30, 1978, respectively.**

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

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The question presented by these appeals is whether appellant has established *that* it was entitled to certain **deductions** claimed on its returns for the income years on appeal. The negligence penalty **imposed** by respondent has not been contested.

Appellant is a California corporation engaged in providing medical services. It is wholly owned by its president, Dr. Emmanuel N. **Mba**. Appellant **used** the cash method of accounting during the years in issue.

Respondent audited appellant's returns and, for some or all of the years, disallowed certain amounts claimed as business expense deductions for travel and entertainment expenses, insurance, training, medical books and tuition, outside services, automobile depreciation, dues **and** subscriptions, and **legal** and accounting fees. Respondent **treated** as unreported income **\$40,000** which appellant deducted from its gross receipts. Although respondent states that appellant agreed at the protest hearing to the **adjustments** regarding dues **and** subscriptions and automobile depreciation, appellant appears **to still dispute** the automobile depreciation disallowance:

Section 24343, which is substantially the same as Internal Revenue Code section 162, permits the deduction of all ordinary and necessary expenses paid or incurred in carrying on a trade or business. It is well settled, however, that deductions are a matter of **legislative** grace and the taxpayer bears the burden of proving that he is entitled to deductions claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934).) The taxpayer claiming business expense deductions, as appellant is here, must not only substantiate that the expenditures were made, but must also prove that they were ordinary, necessary, and incurred in the carrying on of the taxpayer's trade or business.

Respondent determined that several of the claimed expenses were made in connection with a medical clinic in Nigeria which was owned, not by appellant, but by Dr. **Mba** personally. As a general rule, the payment by one taxpayer of the business expenses or obligations of another is not deductible as an ordinary and necessary business expense of the **payor**. (See Appeal of West Valley Realty Company, et al., Cal. St. Ba. of Equal., June 6, 1968.) Appellant has offered no evidence which refutes respondent's determination that the disallowed travel expenses for all three years, insurance and legal

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and accounting expenses for 1977 and 1978, and "outside services" expenses for 1976, were unrelated to appellant's own business and, therefore, nondeductible by the corporation.

Appellant contends that entertainment expenses were incurred which were necessary to maintain contact with physicians who might provide referrals to appellant. No **substantiation** of the expenditures or their nature has been provided and respondent's disallowance of these deductions must be sustained. Respondent disallowed \$5,200 of insurance expense for 1976 because it was a personal expense of Dr. **Mba**. Appellant has apparently conceded the correctness of this disallowance, since it agrees that the expense for insurance on Dr. **Mba's** life was a nondeductible expense. Automobile depreciation was disallowed for 1976 and 1977 to the extent of **Dr. Mba's** personal use of the automobiles. Appellant has merely stated that the deduction should be allowed because the corporation owned the cars, but has made no attempt to **show** that they **were** used entirely for corporate business purposes. We must conclude that the deduction was properly **disallowed**.

Deductions were claimed by appellant for medical books, tuition, and training. Respondent determined that these deductions should be disallowed because they were for expenses incurred by members of Dr. **Mba's** family for their education. Although appellant asserts that the individuals for whom the expenditures were made had agreed to work for the corporation after graduation, we do not believe that such an arrangement, if it existed, would convert an essentially personal expense into an ordinary and necessary expense paid in carrying on the medical business of the corporation. Appellant also asserts that the amount disallowed for 1976 was expended for Dr. Mba to attend medical seminars. This assertion, however, is unsubstantiated as well.

Appellant, in computing its gross receipts for income year 1977, deducted \$40,000 which it contends was a loan from Dr. Mba to the corporation. However, the only evidence which has been presented to us on this issue is a bank book showing that Dr. Mba withdrew that amount from a savings account during income year 1976. This **is insufficient** to show that a loan in that amount was made to the corporation during income year 1977, and we must conclude that respondent properly treated the **\$40,000** as unreported income of the corporation.

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The expenses for which deductions were **claimed** by appellant were all either unsubstantiated or not shown to be related to the corporation's business. Therefore, we must find that respondent's determination was correct and its action must be sustained.

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O R D E R

Pursuant to the views expressea in the opinion of the board on file in this proceeding, **and good** cause appearing tnefor,

IT IS **HEREBY ORDERED, ADJUDGED AND DECREED,** pursuant to section 25667 of the **Revenue** and Taxation Code, that the action of the Franchise Tax **Board** on the protests of Emmanuel N. Mba, M.D., Inc., against proposed assessments of additional franchise tax plus **penalties** in the total amounts of **\$4,942.00, \$8,338.00, and \$4,355.40** -for the income years ended September 30, 1976, September 30, 1977, and September 30, 1978, respectively, be and the same is hereby sustained.

Done at Sacramento, California- this 6th day of May , 1986, by the State Board of Equalization, with Board **Members** Mr. Nevins, Mr. Collis, Mr. Bennett, **Mr. Dronenburg** and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Walter Harvey*</u>	, Member

\*For Kenneth Cory, per Government Code section 7.9