



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LYNN W. GLOVER, JR. AN3) No. **84A-404-MA**
JUNE R. GLOVER)

Appearances:

For Appellants: Lynn W. Glover, Jr.,
in pro. per.

For Respondent: David Lew
Counsel

O P I N I O N

This appeal is made pursuant to section **18593^{1/}** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Lynn W. Glover, Jr., and June R. Glover against proposed assessments of additional personal income tax in the amounts of \$592.90 and **\$1,111.00** for the years 1979 and 1980, respectively.

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

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The sole issue to be resolved in this appeal is whether appellants are entitled to deduct their travel expenditures as educational expenses for the years at issue.

During the years at issue **Mr.** Glover was employed by McDonnell Douglas Corporation as an engineering manager and Mrs. Glover was employed by South Pasadena Unified School District as an elementary school teacher.

During 1979, appellants traveled throughout Mexico and spent a month traveling through Eastern Europe, visiting Hungary, Yugoslavia, Romania, and Bulgaria. The trip to Europe allowed Ms. Glover to earn two semester units of credit from La Verne College which met her school district's requirements for a salary increase,

Appellants' 1980 Southeast Asia tour began in Honolulu, Hawaii, and included several cities such as **Kyoto**, Hiroshima, Nara, Tokyo, Hong Kong, Canton, **Singapore**, Bangkok, and Delhi. The trip also included several days in Great Britain where appellants visited London, Plymouth, and Sherwood Forest,

On their 1979 personal income tax return, appellants claimed a deduction of \$5,430 for employee business expenses incurred during their travel through Mexico and Eastern Europe. On their 1980 return, appellants claimed an employee business expense deduction of \$10,059 incurred during their Southeast Asia and European trip. Respondent disallowed the deductions as being personal in nature. Appellants protested the assessment and a hearing was held. After review, respondent affirmed its assessment. This timely appeal followed.

Respondent argues that appellant& have not provided substantiation that their trips were directly related to the duties of their trade or business. Appellants contend that their travel expenses were incurred for the sole purpose of maintaining and improving Mrs. **Glover's** teaching skills. They also argue that Mr. **Glover's** presence on the trips was necessary because the nature of the travel required his services and assistance in planning the tours and acting as his wife's "tour guide," and doing everything from taking photographs: assisting in **researching** and pursuing trip objectives; providing protection; and the driving.

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Section 17202 of the Revenue and Taxation Code, which is substantially similar to Internal Revenue Code section 162, allows a deduction for all ordinary and necessary expenses paid or incurred by the taxpayer in carrying on any trade or business. Expenditures for education are deductible as ordinary and necessary business expenses if the education (1) maintains or improves skills required in the taxpayer's employment, trade, or business, **or** (2) meets the express requirements of the employer, or the requirements of applicable law or regulations imposed as a condition to the retention by the taxpayer of his employment, status, or rate of compensation. (Treas. Reg. § 1.162-5(a) (1967).)

Expenditures for travel as a form of education are deductible only if the travel is directly related to the duties of **the** taxpayer in his **employment**. Travel shall be considered directly related to the duties of a taxpayer in his employment only if the major portion is of a nature which directly maintains **or** improves skills required by the taxpayer in such employment. (Treas. Reg. § 1.162-5(d) (1967).) Travel which is primarily personal in nature is nondeductible.

Appellants have stated that their travel expenses were incurred for the sole purpose of maintaining and improving **Mrs.** Clover's teaching skills and are thus deductible.

For purposes of analysis, we will first consider the question of whether **Mrs.** Glover was entitled to deduct her travel expenses. It is clear that Mrs. Glover was not required to travel in order to retain her salary, status, or employment. She, therefore, has the burden of establishing that her trips were undertaken primarily to maintain or improve skills required for her employment, and that the cost of the trip therefore constituted an ordinary or necessary expense incurred in carrying on her profession. (Appeal of **Bernice V. Grosso**, Cal. St. Bd. of Equal., Aug. 1, 1980; Appeal of Robert C. and Joan E. Looney, Cal. St. Bd. of Equal., Aug. 30, 1967.) She must show that the **major** portion of her time while traveling was spent not **on ordinary** tourism, but on activities which were so uniquely tailored to strengthen her teaching abilities that the expenditures would be excepted from the general rule that educational travel is to be considered primarily personal in nature and therefore nondeductible. (Appeal of **Bernice V. Grosso**, supra.) This determination is a question of fact which turns on

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the individual circumstances of each case. (Marlin v. Commissioner, 54 T.C. **560 (1970)**.) The skill that must have been maintained must be one which is of central importance to accomplishing her job. (Krist v. Commissioner, 483 **F.2d** 1345, 1348 (2nd Cir. **1973**).)

On the trip taken in 1979, the activities described include attendance at a musical and dance demonstration and art exhibit, and visits to museums, a church, monastery, and fortress. The itinerary also told of the search for and location of members of Mrs. **Glover's** family living in Hungary. While in Southeast Asia, appellants visited temples, shrines, the Hiroshima memorial park, and museums; they shopped in open markets and took a tour of Aberdeen Harbor by boat; attended acrobatic and cultural performances, and martial arts and boxing matches; and toured china and ivory factories, as well as a rubber plantation. In Great Britain, **Buckingham Palace**, the Cathedral of Canterbury, Nottingham, and **the Battle** of Britain exhibit hall were the sites visited by appellants.

While traveling, Mrs. Glover did not attend any classes or lectures involving teaching elementary school students **or** relating to the subjects she taught. Although **appellants did** dine with a member of the faculty of a university in Madras, India, she has not established that in the various countries visited she made any significant attempts to secure assistance from responsible individuals who could provide her with useful educational information. (See Marlin v. Commissioner, supra:)

Nonetheless, Mrs. Glover contends that the requirements for deductibility have been satisfied. In **support** of her contention, she emphasizes the fact that she made extensive use of her pictures and slides in her class presentations, and that the school district approved of her travel and gave her salary credits. Mrs. Glover also points to the fact that she earned formal academic credit for a portion of her travel.

Although we **recognize** that Mrs. Glover's experiences and first-hand acquaintance with other cultures may enhance her ability to relate to her students, that fact does not make her travels deductible. Travel may be educational and still not deductible. (Dennehy v. Commissioner, 309 **F.2d** 149 (6th Cir. 1962); Appeal of Bernice V. Grosso, supra.) Appellants did take pictures which Mrs. Glover planned to, and did, use in classroom

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activities. Although of interest to **students**, the pictures did not illustrate any special course of study. Indeed, the slides were of such a general nature that appellants were able to use them in community programs for charitable purposes. Appellants argue that the slides were helpful in fulfilling the school district's requirement that the students develop multi-cultural awareness; however, there was no showing that the school district required multi-cultural awareness be taught through slides and presentation of life abroad. The **courts** have frequently held in such situations that, although the slides and materials from a trip were used at every available opportunity, the entire trip was not directly related to the taxpayer's improvement of his skills as a teacher of subjects as various as reading, writing, math, spelling, geography, or science. (See, e.g., Denison v. Commissioner, ¶ 71,249 T.C.M. (P-H) (1971).)

Similarly, the fact that Mrs. **Glover's** school **district** approved the trip and granted her salary credits as a result has **no** affect on the deductibility of the expenses. (Appeal of Bernice V. Grosso, supra.) The fact that a salary increase was given does not mean that the requisite primary purpose of the travel was established. Notwithstanding the salary increase, **Mrs. Glover** must still establish that the primary purpose of the travel was to maintain or sharpen skills required in **her work**. (Roy v. Commissioner, ¶ 69,115 T.C.M. (P-H) (1969).) **Neither** the statute nor the regulations delegate to the appellant's employer the authority to determine deductibility. (Adelson v. United States, 342 F.2d 332 (9th Cir. 1965).)

When presented with similar factual situations, we have consistently denied a deduction for the expenses of educational travel such as that described above. (Appeal of Don E. and M. L. Smith, Cal. St. Bd. of Equal., July 26, 1982; Appeal of Richard T. and Helen P. Glycer, Cal. St. Bd. of Equal., Aug. 16, 1977.) In the instant case, Mrs. Glover has not established that travel was necessary to maintain or sharpen skills required in her work. She has failed to provide sufficient proof regarding her travels which would demonstrate that the travels were especially planned **or** specifically tailored to improve her skills as an elementary school teacher. Rather, as respondent points out, she enjoyed the typical tourist visit which fulfills the general cultural aspirations of the traveler and a personal visit to Eastern

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Europe in order to "find one's roots". We agree that the law and regulations provide that such travel is a non-deductible personal expense.

With respect to Mr. Glover's expenses, their deductibility may be established by either of two approaches. The first would be whether Mr. Glover's expenses were necessary and ordinary to his trade or business as an engineering manager. We see no basis for this contention at all. The second approach as put forth by appellants is that the expenses necessitated by Mr. Glover's presence was a necessary business expense incurred by his wife. This contention presupposes that we find merit in Mrs. Glover's claim of deductibility. As related above, we do not. Nevertheless, even if Mrs. Glover's claim was allowed, we do not agree that Mr. Glover's expenses would qualify as ordinary and necessary business expenses. Mr. Glover argues that his presence was necessary because of his skill in making travel arrangements and the fact that he performed the photography and driving. Appellants also mention the fact that Mrs. Glover had a medical problem of unknown pathology which is extremely serious. While these factors all point to the fact that Mr. Glover's presence was certainly convenient, we do not agree that his presence was of such necessity as to constitute an ordinary and necessary business expense.

Appellants' final contention that respondent's allowance of certain deductions for prior years is determinative of the acceptability of deductions for the appeal years is also without merit. Each year's deductions stand on their own merits. Appellants are limited to the facts presented in the appeal years in attempting to establish the deductibility of their travel expenses.

For the reasons stated above, respondent's action in this matter must be sustained in all respects.

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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 Board on the protest of Lynn W. Glover, Jr., and June R. Glover against proposed assessments of additional personal income tax in the amounts of \$592.90 and **\$1,111.00** for the years 1979 and 1980, 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.

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

*For Kenneth Cory, per Government Code section 7.9