

Appeal of Robert L. and Phyllis Salaber

The issue presented by this appeal is whether appellants may deduct certain unreimbursed business expenses on their personal income tax return.

Appellants filed their 1984 California personal income tax return and claimed a deduction of \$6,828.63 for unreimbursed business expenses that related to two corporations, Viking Travel and Florence Macaroni. Apparently, appellants owned an interest in and served as officers of the aforementioned two corporations. During the appeal year, appellant-husband was employed full-time as a civil engineer by a corporation that is not involved in this appeal.

Regarding Viking Travel, appellants deducted the amount of \$6,558.63 as unreimbursed expenses incurred for the following: transportation, meals, lodging, and other travel items while participating in familiarization trips to destinations such as India, Nepal, Spain, and Hawaii. Appellants stated that "Until the agency is in the black, we cannot allow it to reimburse us for expenses." (Respondent's Exhibit E-2.) Respondent disallowed the expense deduction on the basis that no deduction is allowed under California law for the personal payment of corporate obligations.

Appellants also claimed a deduction of \$270 for travel and commuting expenses related to Florence Macaroni Co. Prior to the filing of this appeal, respondent revised its assessment and allowed \$190 in travel expenses incurred for Florence Macaroni Co. board meetings outside the area, but disallowed \$80 in alleged commuting expenses.

In general, unreimbursed expenses incurred by a corporate officer on behalf of the corporation are not deductible by the officer on his personal tax return. (Appeal of Miguel Montes, Cal. St. Bd. of Equal., June 28, 1977.) An exception to the general rule is recognized where the corporate officer is expected or required to incur the expenses without reimbursement from the corporation in the course of discharging executive duties. (See Heidt v. Commissioner; 274 F.2d 25 (7th Cir. 1959) .)

Appellants contend that the personal deductions claimed for Viking Travel were only potential corporate expenses and thus should be deductible on their personal income tax return. Since Viking Travel was not profitable, appellants contend that appellant-husband would pay for his own costs of travel, meals, and lodging.

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For appellants to be entitled to deduct the costs of travel, meals, lodging, and vehicle expenses they incurred on behalf of the two corporations, they must prove that they were required to incur such costs as employee(s) or officer(s) of the corporations, not simply that the corporations were financially unable to reimburse them for corporate expenses. (See Leonard Thomas v. Commissioner, ¶ 88,505 T.C.M. (P-H), AT 88-2592 (1988).)

The expenditures made by appellants for Viking Travel were not required to be incurred in appellants' capacity as employees or officers. Clearly, appellants would have been reimbursed by Viking Travel had there been available corporate funds. Although appellants were not reimbursed, that does not alter the nature of the expenditures. Thus, expenditures made on behalf of Viking Travel do not become ordinary and necessary expenditures of and allocable to appellants. (See Leonard Thomas v. Commissioner, supra.)

It is a fundamental principle of tax law that deductions are matters of legislative grace and that taxpayers have the burden of clearly showing their rights to the deductions they claim. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 13481 (1934).]) Appellant-wife used a company car to take care of her responsibilities in the San Francisco Bay area for Florence Macaroni. The responsibilities in the bay area have not been demonstrated to be more than commuting expenses. Clearly, commuting expenses are not deductible. (Rev. & Tax. Code, § 17201; Treas. Reg. § 1.162-2(e) .).

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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 Robert L. and Phyllis Salaber against a proposed assessment of additional personal income tax in the amount of \$731 for the year 1984, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of April, 1989, by the State Board of Equalization,

Paul Carpenter _____, Chairman
Conway H. Collis _____, Member
William M. Bennett _____, Member
Ernest J. Dronenburg, Jr. _____, Member
John Davies* _____, Member

*Per Gray Davis, per Government Code Section 7.9.