BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 85A-160-CB
RAYMOND E. AND JOY LECOMPTE)

Appearances:

For Appellants: Raymond and Joy LeCompte

For Respondent: Israel Rogers
Supervising Counsel

O P I N I O N

This appeal is made pufsuant to section 18593[1]/ of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Raymond E. and Joy LeCompte against proposed assessments of additional personal income tax in the amounts of $402 and $1,013 for the years 1980 and 1981, respectively.

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

The issues presented by this appeal are whether appellants are entitled to certain deductions and credits for the appeal years.

During the two years at issue, Mr. LeCompte was employed as an airline pilot, and Mrs. LeCompte taught word processing. Appellants also owned an aircraft leasing business. In brief, respondent disallowed a solar energy credit for 1981 and disallowed various deductions including a business bad debt deduction in 1980, a medical care expense deduction for a health club membership in 1980 and 1981, and a charitable contribution deduction for an electrical panel donated to the City of Los Alamitos in 1980. Appellants also contest the amount of interest to be paid on the proposed assessments. Each of the aforementioned disallowances and the interest issue will be described in more detail as separate matters in this opinion. A separate issue which involved business expense deductions of $895 and $2,680 for the years 1980 and 1981, respectively, for wages paid to students who assisted Mrs. LeCompte by grading papers has been conceded by respondent. During 1987, the appellants paid $679 toward the tax deficiency.

The first issue involves a soiar energy credit. In 1981, appellants installed, a solar-heated swimming pool system and claimed a California solar energy credit based on a 55-percent credit. Respondent recomputed the credit using the correct figure, 45 percent. The appellants agree that the correct figure is 45 percent, but assert that the mistake was simply a mathematical error and that they should be released from the accrual of interest beyond the date of discovery of the error. Appellants state that the additional tax owed resulted from a mathematical error in computing the solar energy credit plus interest from the date of filing the return, April 15, 1982, through the date of discovery, January 6, 1983. Furthermore, appellants contend that a mathematical error is not a tax defkiency.

Section 18686 of the Revenue and Taxation Code imposes interest upon any assessed tax. The imposition of interest is mandatory under this section, and this board has no power to waive the accrued interest. (See e.g., Appeal of John M. Shubert, Cal. St. Bd. of Equal., Sept. 25, 1979.) The reason for the mandatory nature of interest is that interest is not a penalty. Rather, a determination that a taxpayer has not paid the tax means that the taxpayer had the use of money actually owed to the State of California. Therefore, the taxpayer is charged interest for the use of that money, until paid, in the same manner he would have been charged if he had borrowed the funds from a lending institution, such as a bank.

It appears that respondent and appellants arrived at an oral agreement that appellants would pay the tax due on the partial disallowance of the solar energy credit. However, it is disputed as to whether the parties agreed on the interest due. Because all issues were not resolved, all issues remained open on the appeal and the interest accrued.

If appellants are contending that they entered into a final settlement agreement with respondent, such argument is without merit. A prerequisite to a binding settlement agreement is strict compliance with the statute authorizing such agreements, which includes a requirement that the agreement be in writing. (See Rev. & Tax. Code, § 19132.) Appellants have neither alleged nor presented facts sufficient to establish the existence of any written agreement conforming to the requirements of section 19132.

Apparently, appellants allege that, even though there may not have been a binding written compromise agreement between them and respondent, nevertheless respondent is equitably estopped from asserting deficiencies and interest herein because appellants thought there was an agreement of compromise. Appellants contend that respondent's manager of the Protest Review Unit agreed that the interest on the tax from the alleged mathematical error would stop accruing at the date of discovery of the error. Because tax liability must be based upon the law and not on oral statements of respondent's officer or agent, this board will only apply the doctrine of equitable estoppel against respondent with the utmost caution. (See Estate of Emerson v. Commissioner, 67 T.C. 612, 617-618 (1977).) The doctrine of estoppel cannot be applied unless there is a clear showing of detrimental reliance. (Appeal of Steve E. Sherman, Cal. St. Bd. of Equal., Jan. 3, 1983.) Since appellants have failed to show that they relied on the manager of the protest review unit to their detriment, we must reject appellants' estoppel argument.

Regarding the second issue, appellants claimed a business bad debt deduction in 1980 for $4,000 advanced to Mr. Larry Stansbury, owner of Aeroplane Co. Mr. Stansbury was a fixed-base operator for three of appellants' aircraft in appellants' aircraft leasing business. Appellants gave Mr. Stansbury two checks for $2,000 each; an agreement printed on the back of both checks stated that if the $2,000 was not used for the purchase of a one-half interest in the Aeroplane co. by July 1, 1980, then the note would become due and payable. Apparently, the money was given to Mr. Stansbury as earnest money for appellants to purchase a one-half equity interest in Aeroplane Co. Respondent disallowed the deduction as a business bad debt and reclassified it as a nonbusiness bad

debt because it found that appellants' dominant motivation in making the advances was not related to their business of aircraft leasing.

To claim a business bad debt deduction, appellants must show that their dominant motivation in advancing funds was to protect their business or was otherwise proximately related to their business. (United States v. Generes, 405 U.S. 93 [31 L.Ed.2d 621 (1972); Appeal of Bruce D. and Donna G. Varner, Cal. St. Bd. of Equal., July 26, 1978.) The determination of a taxpayer's dominant motive is essentially a factual inquiry with the burden of proof on the taxpayer. (Putoma Corp. v. Commissioner, 66 T.C. 652, 673 (1976).) It must be clear from the record that the dominant reason for making the $4,000 advance which gave rise to the alleged debt was business related rather than investment related. An equally balanced business-investment relationship is not sufficient. (See United States v. Generes, supra.) It is questionable here that the advanced funds were a loan at all, as opposed to being an attempt to purchase a one-half equity interest in Aeroplane Co. Appellants have not provided sufficient evidence to demonstrate that their dominant motive for the purchase of a one-half equity interest in Aeroplane Co. meets the requirements to be classified as a business bad debt. (See United States v. Generes, supra.)

The third issue involves claimed medical care expenses. For both 1980 and 1981, appellants claimed $500 deductions for Mr. LeCompte's health club membership. Appellants provided notes from a physician which advised Mr. LeCompte to lose weight. Additionally, appellants provided a physician's letter dated September 21, 1983, which recommended organized and supervised exercise programs to reduce the weight problem.

It is a fundamental principle of tax law that deductions are matters of legislative grace, and the taxpayers have the burden of clearly showing their right to the deductions they claim. (New Colonial Ice Co. v. Hielverino, 292 U.S. 435 [78 L.Ed. 1348] (1934).) For the appeal years, section 17257 defined the term "medical care" as including the diagnosis, cure, mitigation, treatment or prevention of disease. Section 17282 stated that, except as otherwise expressly provided, no deduction shall be allowed for personal expenses. Since sections 17257 and 17282 were substantially similar to sections 213 and 252 of the Internal Revenue Code (I.R.C.), federal precedent is persuasive in the proper interpretation and application of the California statutes. (Meanley v. McColgan, 49 Cal.App.2d 203, 209 [121 P.2d 451 (1942).) No medical deduction is permitted for expenditures

which are merely beneficial to the general health of an individual. (Treas. Reg. § 1.213-1(e)(1)(ii).) Generally, fees paid to a health institute at which the taxpayer does exercise are held to be a personal expense and not deductible. (Rev. Rul. 55-261, 1955-1 C.B. 307.) However, fees paid to a health institute may be deductible as a medical expense if such treatments are prescribed by a physician and substantiated by a physician's statement that the treatments are necessary for the alleviation of a physical or medical defect or illness of the individual receiving the treatments. (Rev. Rul. 55-261, supra.)

Appellants contend that the health club membership was necessary to alleviate Mr. LeCompte's weight problem. However, a weight loss program was not considered to be a medical care expense even when recommended by a physician, where the recommendation was based on improving the taxpayer's general health and not on curing a specific ailment; (Rev. Rul. 79-151, 1979-1 C.B. 116; see Mary Gayle Strickland v. Commissioner, ¶ 84,301 T.C.M. (P-H) (1984).) An expenditure does not qualify for a medical care deduction simply because it is recommended by a physician. (H. Grant Atkinson v. Commissioner, 44 T.C. 39 (1965).) The series of notes from the physician stating that Mr. LeCompte should lose weight did not prescribe a health club membership. The physician's letter dated September 21, 1983, well after the years in issue, was clearly written in direct response to respondent's audit of this issue. The letter gave no medical reason why the exercise program must be "organized" and "supervised". Therefore, appellants are not entitled to their claimed medical expense deduct ion.

The final issue involves a charitable contribution deduction. In 1980, appellants donated an electrical panel to the City of Los Alamitos and claimed a charitable contribution of $2,500. The City of Los Alamitos accepted the donation and estimated the value of the panel to be $2,500. The written estimate was determined by having one of the city's employees call various supply houses for the cost of a similar used panel. Respondent denied the deduction because appellants did not establish a cost basis in the panel, and respondent believed that the panel had no fair market value.

Section 17214, applicable in 1980, allowed a deduction for certain charitable contributions. Section 17214 was substantially similar to I.R.C. section 170(c). Where a charitable contribution is made of property other than money, the amount of the contribution is the fair market value of the property at the time of the contribution. (Goldman v. Commissioner, 46 T.C. 136 (1966), affd., 388 F.2d 476 (6th Cir. 1967); Treas. Reg. §1.170A-1(c)(1).) At the time respondent

audited the relevant return, the applicable federal regulation (Treas. Reg. §1.170A-5) required a taxpayer claiming a charitable contribution for donated property to file a statement with the return stating, among other things, the cost basis of the property. That subdivision of the federal regulations has since been repealed, and no such requirement now exists. (See T.D. 8002, 1985-1 C.B. 60.) Apparently, respondent relied on the repealed provision since its brief talks about "lack of substantiation" in this context. However, respondent has not provided any reason why the cost basis of the property needs to be known in this appeal. Based upon the estimated value of the electrical panel as provided by the City of Los Alamitos, the fair market value of the donated property is $2,500. Appellants are entitled to a charitable contribution deduction in that amount.

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 Raymond E. and Joy LeCompte against proposed assessments of additional personal income tax in the amounts of $402 and $1,013 for the years 1980 and 1981, respectively, be and the same is hereby modified to allow the charitable contribution deduction. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 26th day of September1989, by the State Board of Equalization, with Board Members Mr. Carpenter, Mr. Bennett, Mr. Dronenburg, and Mr. Davies present.

Paul Carpenter, Chairman

William M. Bennett, Member

Ernest J. Dronenburg, Member

John Davies*, **, Member

, Member

*For Gray Davis, per Government Code section 7.9

**Abstained