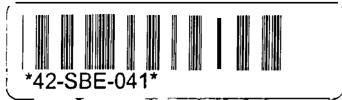

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
KATHLEEN BURKE HALE)

Appearances:

For Appellant: J. B. Scholefield, Certified Public Accountant.

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner; Harrison Harkins, Associate Tax Counsel.

OPINION

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Kathleen Burke Hale to a proposed assessment of additional tax in the amount of $128.22 for the taxable year ended December 31, 1935.

The proposed assessment resulted from the disallowance by the Commissioner

(1) of a deduction from gross income of $325.00, such amount having been paid during the year '1935 to a protective association for protecting from molestation a beach home owned by the Appellant;

(2) of a deduction from gross income of $600.00, such amount having been paid during the year 1935 to a firm of attorneys as an annual retainer fee;

(3) of a credit against the California personal income tax of $70.30, such amount having been paid by Appellant, a resident of California, to the Dominion of Canada on dividends received on shares of stock owned by Appellant in Canadian Corporations during the year 1935.

Section 8(a) of the Personal Income Tax Act (Chapter 329, Statutes of.1935) permits as a deduction in computing net income

> "All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. ..."

The deduction in the amount of the $325.00 paid to the protective association was disallowed by the Commissioner upon the ground that from the information submitted by Appellant did not appear that the expense was ordinary and necessary, and that it was paid or incurred in the 'carrying on of a trade or business.' Appellant contends that the beach home was held for business rather than personal purposes, and that the expenditure was made for the purpose of safeguarding the Appellant's business interests.

Since it appears that the beach property was rented from April 10, 1935, to December 10, 1935, and, to the best of Appellant's recollection, was not occupied for personal use during the year, it is properly to be regarded as having been used for business purposes during 1935. An expenditure of the type in question is common for the protection of valuable beach property from vandals and the ravages of nature. A large percentage of the property owners similarly situated also made use of the protective system. We conclude, accordingly, that the expenditure in the amount of $325.00 represented an ordinary and necessary expense paid in the carrying on of a business within the meaning of Section 8(a) of the Act.

The deduction from gross income in the amount of the $600.00 paid as a legal retainer fee was also disallowed by the Commissioner upon the ground that it did not fall within the provisions of Section 8(a). This determination was based upon an alleged failure of the Appellant to show that the fee was paid with respect to a trade or business as distinguished from personal affairs. In addition to the beach property, the Apellant owned and operated a ranch and held extensive investments in securities. She contends that in operating the ranch and handling her investments she was engaged in business, and that the retainer fee, being incurred in connection therewith, was a proper deduction under Section 8(a).

It has recently been held that attorneys' fees and other expenses incurred in managing investments in securities are not deductible as business expenses, no matter how extensive and complex the investments may be. Higgins v. Helvering, 312 U. S. 212; United States v. Pyne, 313 U. S. 127. When legal services are rendered-connection with personal affairs and also in connection with business affairs; and an allocation is not made of the fee for such services and no ground for allocation is shown, there is ample justification for disallowance of the entire amount as a deduction from gross income. Arthur Jordan, 12 B. T. A. 423. Since the Appellant has not shown that any particular portion of the retainer fee paid by her was applicable to the operations of her ranch or other real estate holdings and no basis for making an allocation has been presented, we believe that the action of the Commissioner in disallowing the entire amount of the fee must be sustained.

Appeal of Kathleen Burke Hale

The remaining question, the disallowance of the credit claimed on account of the tax paid in the Dominion of Canada on shares of stock in Canadian corporations must likewise, in view of our decision in the Appeal of Franke C. Fitch, dated July 7, 1942, be determined in flavor of the Commissioner.

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 that the action of Charles J. McColgan, Franchise Tax Commissioner, in overruling the protest of Kathleen Burke Hale to a proposed assessment Of an additional tax in the amount of $128.22 for the taxable year ended December 31, 1935, be modified to allow the deduction from gross income in the amount of $325.00 claimed under the provisions of Section 8(a) of the Personal Income Tax Act. In all other respects the action of the Franchise Tax Commissioner is hereby sustained.

Done at Sacramento, California, this 3rd day of September, 1942, by the State Board of Equalization.

R. E. Collins, Chairman
George R. Reilly, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary