

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
CHARLES S. HOWARD)

Appearances:

For Appellant: Orville R. Vaughn, Attorney at Law

For Respondent: W. M. Walsh, Assistant Franchise Tax
Commissioner; Hebard Smith, Associate
Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code (formerly Section 19 of the Personal Income Tax Act) from the action of the Franchise Tax Commissioner on the protests of Charles s. Howard to proposed assessments of additional personal income tax in the amounts of \$586.22, \$2,646.17 and \$2,592.79 for the taxable years 1939, 1940 and 1941, respectively.

In 1925 the Appellant purchased about 22 acres of residential property located partly in the City of Burlingame and partly in the town of Hillsborough, San Mateo County. The Appellant's intention was to raze an old house on the property and to build a new residence thereon. The house was razed and excavation started for the new building, but in view of certain personal circumstances the project was not completed and the property has been held for sale since May 1926. In 1929 the Appellant gave 4.93 acres of the land to one of his sons, upon which the son built a residence.

Appellant claimed deductions from gross income for the maintenance and upkeep of the remaining land in the amounts of \$8,908.19, \$8,513.04 and \$8,422.80 for the taxable years 1939, 1940 and 1941, respectively. These expenses were incurred for the services of four or five gardeners and Appellant contends that they were required to keep the property in condition for sale as an estate, The Appellant also deducted from his gross income for the years 1940 and 1941 the amounts of \$388.15 and \$144.00, respectively, which he had paid as safe deposit rents and other investment expenses.

It is the position of the Appellant that the property maintenance and upkeep expenses and the investment expenses were deductible under Section 8(a) of the Personal Income Tax Act, which authorized the deduction from gross income of "All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. ..."

The San Mateo County property was admittedly bought as

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residential property and a conversion to a use in the trade or business of the Appellant must be shown before the costs of the maintenance of the property may be deducted. Fhipps v. Helvering, 124 Fed. 2d 292. The fact that the Appellant never actually resided on the property will not prevent it from being treated as residential property not used in his trade or business. Robert H. Montgomery, 37 B.T.A. 232, 242-244. The offering of the property for rent or sale does not convert it to a trade or business use (Robinson v. Commissioner, 134 Fed. 2d 168) and, similarly, the fact that there is no longer a livable house on the premises does not result in such a conversion. Warren Leslie, Sr., 6 T.c. 488. The Appellant, accordingly, has failed to show an acts which work an appropriation of the property in question to a trade or business use, and it necessarily follows that the expenses incurred in the maintenance of the property are not deductible.

The deduction of the safe deposit rents and other investment expenses for the years 1939 and 1940 under Section 8(a) of the Act is precluded by Meanley v. McColgan, 49 Cal. App. 2d 203. Although Section 8(a) was amended in 1943 to authorize the deduction of expenses paid or incurred for the production or collection of income (Stats. I-943, p. 1483), the Section as so amended is applicable to taxable years beginning after December 31, 1942 (stats. 1943, p. 1565).

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 18593 of the Revenue and Taxation Code, that the action of Chas. J. McColgan, Franchise Tax Commissioner, on the protests of Charles S. Howard to proposed assessments of additional personal income tax in the amounts of \$486.22, \$2,646.17 and \$2,592.79 for the taxable years 1939, 1940 and 1941, respectively, be and the same is hereby sustained,

Done at Sacramento, California, this 17th day of November, 1948, by the State Board of Equalization.

Wm. G. Bonelli, Chairman
J. H. Quinn, Member
J. L. Seawell, Member
G. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary