



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
REDEL G. AND NANCY WICKS)

Appearances:

For Appellants; Rendel G. Wicks, *in pro. per.*
Jerome Pailey, Certified Public
Accountant

For Respondent: Israel Rogers, Associate Tax
Counsel.

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Rendel G. and Nancy Wicks against proposed assessments of additional personal income tax in the amounts of \$40.68, \$32.96 and \$82.88 for the years 1957, 1958 and 1959, respectively. After this appeal was filed, appellants and respondent agreed upon all items previously at issue except one. They have stipulated that no additional tax is due for 1957, and that a tax of \$9.87, plus interest; is due for 1958. They have also agreed upon a minimum deficiency of \$25.26, plus interest, for the year 1959 but could not resolve one 1959 item, the disallowance of \$500 of claimed travel expenses.

Rendel G. Wicks (hereafter alone referred to as appellant) is a commercial artist. He produces paintings and drawings for widely diversified clients, including airlines. In 1959 he went to Europe to paint seven capital

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cities from the air pursuant to a contract with Trans-World Airlines. Among the cities visited were Rome, Madrid, Athens, Paris and Lisbon. The trip lasted 50 days. Aside from the time consumed in painting, a considerable amount of time was spent in developing background information, in obtaining the cooperation of political officials and in overcoming opposition from local airlines. In addition to other expenses, appellant incurred unreceipted costs during the trip for items under \$10 each, such as expenditures for taxis, tips and other incidentals.

Appellant deducted \$3,804 on his 1959 return as travel expense for the above described trip. Respondent disallowed \$500 of this amount, partially on the ground that appellant's records supported expenditures of only \$3,300 and partially because respondent was not satisfied that all of the recorded amounts were business expenses. Appellant contends that all of the recorded amounts were related to his business and that an additional \$500 was spent for relatively small items which he did not record and for which he did not obtain receipts.

All ordinary and necessary business expenses, including traveling expenses while away from home in the pursuit of business, are deductible. (Rev. & Tax. Code, § 17202.) The burden is imposed upon the taxpayer to prove he is entitled to a tax deduction. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348].)

When expenses are incurred, however, and the taxpayer's records render it impossible to determine the exact amount spent, an approximation may be made. (Cohan v. Commissioner, 39 F.2d 540; Mary Sachs, T.C. Memo., Dkt. Nos. 30215, 35508, Aug. 20, 1952, remanded on other grounds; 208 F.2d 313. Cf. Internal Revenue Code, § 274, limiting the Cohan rule for federal tax purposes for years after 1952.) An approximation is particularly appropriate with respect to travel expenditures small in amount, such as taxi fare, tips and similar items not readily susceptible to substantiation. (Cal. Admin. Code, tit. 18, reg. 17202(o), subd. (4)(c); 4 Mertens, Law of Federal Income Taxation, § 25.100, p. 295; Groh, Travel and Entertainment Expenses, 39 Taxes 253, 255-2 5 6 .)

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Applying the foregoing principles to the factors present in this appeal - the time spent in Europe, the amount of traveling done while there, the difficulties encountered, the nature of the unreceipted expenditures, and the impression of veracity which appellant projected at the hearing of this matter - we are persuaded that appellant incurred deductible travel expenses in the amount of \$3,804 as claimed by him.

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 Rendel G. and Nancy Wicks against proposed assessments of additional personal income tax in the amounts of \$40.68, \$32.96 and \$82.88 for the years 1957, 1958 and 1959, respectively, be reversed for the year 1957, modified for the year 1958 by, reducing the deficiency to \$9.87 plus interest as allowed by law, and modified for the year 1959 by reducing the deficiency to \$25.26, plus interest as allowed by law.

Done at Sacramento, California, this 12th' day of May, 1965, by the State Board of Equalization.

John W. Lynch, Chairman
Paul R. [unclear], Member
Frank [unclear], Member
Dubius [unclear], Member
[unclear], Member

ATTEST:

[Signature]

Secretary