



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JAMES E. AND E. ELIZABETH FRIDEN)

For Appellants : James E. Friden,
in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

John A. Stilwell, Jr.
Counsel

OPINION

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 James E. and E. Elizabeth Friden against a proposed assessment of additional personal income tax for the year 1971. Although the original proposed assessment in this case was in the amount of \$514.68, appellants conceded their liability for \$250.44 of the total assessment for 1971, protesting only respondent's disallowance of certain business expense deductions

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which they claimed in that year. Consequently, for purposes of this appeal the amount remaining in issue is \$264.24.

Until May 1970, appellant James E. Friden was employed by Avon Products in the State of New York. His employment was terminated in that month, and after securing another position with Merle Norman Cosmetics in Inglewood, California, he and his wife established residence in Los Angeles on January 29, 1971. While Mr. Friden negotiated for the purchase of a home in the Los Angeles area, Mrs. Friden returned to their yet unsold house in New York to care for their son.

On March 1, 1971, Mr. Friden's immediate supervisor at Merle Norman Cosmetics suffered a heart attack, resulting in unexpected additional responsibilities in Mr. Friden's job. These added responsibilities made it impossible for him to return to New York for a long enough period of time to finalize the sale of his home there. Thus until August 1971, appellants were forced to maintain two separate homes. During this period Mr. Friden made weekend trips between California and New York in order to visit his wife and son. Appellants were not reimbursed for any of those expenses.

On their personal income tax return for 1971, appellants claimed business expense deductions for the costs they incurred in maintaining their California home between February and August of that year. They also claimed deductions for the cost of Mr. Friden's weekend flights to New York. Those expense deductions totalled \$3,879.00. Respondent allowed only the August living expenses and plane fare, amounting to \$417.00, disallowing the remaining business expense deductions claimed by appellants on the ground that they did not arise from any employment duties which required Mr. Friden to be away from his tax home, as is required by the applicable statute.

Appellants contend that the unreimbursed expenses they incurred for the maintenance of a second home in California and for Mr. Friden's airplane trips between their two residences were a direct result of the circumstances surrounding Mr. Friden's employment with Merle Norman Cosmetics. As a result, appellants argue, these expenditures should be allowed as business expense deductions for the year in question.

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Although we sympathize with appellants and we recognize their predicament, we must nevertheless conclude under the law that appellants were not entitled to deduct either the cost of maintaining their California home or the cost of Mr. Friden's flights to New York. Section 172.02 of the California Revenue and Taxation Code provides in part:

(a) There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including--

* * *

(2) Traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business;. ..

In this case appellants became residents of California, for tax purposes, on January 29, 1971. As such, their California home became their tax home on that date. Since section 17202 allows deductions only for those expenses incurred "while away from home," appellants cannot deduct the cost of maintaining their California home.

Moreover, appellants would not be entitled to a deduction for the cost of maintaining their New York home during the same period. Section 17202 clearly states in subdivision (a)(2) that only expenses incurred away from home "in the pursuit of a trade or business" are allowable as business expense deductions. The maintenance of Mr. Friden's New York home was in no way related to his employment with Merle Norman Cosmetics. The expenses were therefore not deductible business expenses.

Neither are appellants entitled to a deduction for the cost of Mr. Friden's weekend trips to New York. In Commissioner v. Flowers, 326 U.S. 465 [90 L. Ed. 2031], the Supreme Court held that one of three conditions which must be satisfied before a traveling expense deduction may be made under section 23 (a) (1) (A) of the

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Internal Revenue Code of 1939 [now section 162(a) of the Internal Revenue Code of 1954, which is substantially equivalent to section 17202, subdivision (a), of the Revenue and Taxation Code] is the following:

(3) The expense must be incurred in pursuit of business. This means that there must be a direct connection between the expenditure and the carrying on of the trade or business of the taxpayer or of his employer. Moreover, such an expenditure must be necessary or appropriate to the development and pursuit of the business or trade. (326 U.S. at 470.)

Mr. Friden's flights to New York were motivated primarily by his desire to visit with his family. He conducted no business for himself nor for his employer during those trips. As a result, the costs of his travels to New York are not deductible business expenses. For this reason, and the reasons stated above, we must sustain respondent's action in this matter.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

