76-SBE-055

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
BENJAMIN F. AND)
SUE S. KOSDON)

For Appellants: Benjamin F. Kosdon, in pro. per.

For Respondent: James W. Hamilton
Acting Chief Counsel

Kathleen M. Morris
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 Benjamin F. and Sue S. Kosdon against a proposed assessment of additional personal income tax in the amount of $296.85 for the year 1970.

Appeal of Benjamin F. and Sue S. Kosdon

Appellants, husband and wife, were residents of Ventura, California, during the year on appeal. Mr. Kosdon (hereafter appellant) was a practicing lawyer who specialized in disability and personal injury cases. In 1970 he and his son journeyed to Johannesburg, South Africa. The trip lasted thirty-six days and included stopovers in France, Israel, Greece, Ethiopia, Kenya, Tanzania, and Uganda. According to appellant, the purposes of the trip were to permit his son to photograph African wild life and to enable appellant to investigate the advisability of making further investments in South African gold mine companies, Appellant and his son spent a total of five days in Johannesburg. While in South Africa appellant states that he visited a South African stock broker and the Johannesburg stock exchange, had discussions with a Mr. Wilkerson of Rand Company and with officials of Durban Deep Mines on the subject of gold and gold mine stocks, and visited the gold mines. Upon his return to this country, appellant purchased South African gold mine stocks through United States brokers.

On their joint California personal income tax return for 1970, appellants claimed a deduction of $2,500.00 as "traveling expenses to Johannesburg SA W/R to investments." Respondent disallowed all but $200.00 of the claimed deduction, which resulted in the assessment of additional tax and gave rise to this timely appeal.

Whether appellants are entitled to the disallowed portion of their claimed travel expense deduction constitutes the sole issue before us.

In deciding this question, it must be kept in mind that deductions are a matter of legislative grace and a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms, (New Colonial Ice Co. v. Helvering, 292 U. S. 435 [78 L. Ed. 1348]; Deputy v. du Pont, 308 U. S. 488 [84 L. Ed. 416]; Appeal of John and Eliza Gallois, Cal. St. Bd. of Equal., Dec. 10, 1963.) Appellant stated in his reply brief, "I am relying strictly on Section 17202 of the Revenue and Taxation Code which allows a deduction for travel expenses while away from home in the pursuit of a trade or business." The relevant portions of section 17202 state:

> (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 --
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> * * *
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> (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 relying on section 17202, appellant is apparently arguing that management of his personal stock portfolio constitutes a "trade or business" and hence travel expenses related thereto are deductible business expenses, We cannot agree. It is well established that the management of one's personal investments, however extensive, does not constitute a "trade or business. " (Higgins v. Commissioner, 312 U. S. 212 [85 I,. Ed. 783]; Commissioner v. Smith, 203 F. 2d 310, cert. denied, 346 U. S. 816 [98 L. Ed. 343]; Appeal of John and Eliza Gallois, supra; Appeal of Jerome I. and Catherine Bookin, Cal. St. Bd. of Equal. , March 26, 1974.) It follows that the travel expenses in question are not deductible under section 17202 and were properly disallowed by respondent.

ORDER,

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

Appeal of Benjamin F. and Sue S. Kosdon

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 Benjamin F. and Sue S. Kosdon against a proposed assessment of additional personal income tax in the amount of $296.85 for the year 1970, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of May, 1976, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Executive Secretary