

Appeal of Allan B. Crane

The sole issue presented by this appeal is whether respondent properly denied deductions claimed by appellant for amounts contributed to his union pension fund.

Appellant's employment as a litho-pressman requires his membership in the Graphic Arts International Union. As a condition of his continued membership in the union, appellant is required to contribute a percentage of his earnings to the union's old age pension fund. If appellant terminates his union membership prior to retirement, he will be entitled to a return of 95 percent of the contributions. In all other events, appellant, his estate, or his designated beneficiaries will be entitled to a return of at least all of the contributions in the form of pension, disability, or death benefits.

On his California personal income tax returns for the years in question, appellant deducted the pension fund contributions as business expenses. In support of the deductions appellant relies on a 1954 federal Revenue Ruling (Rev. Rul. 54-190, 1954-1 Cum. Bull. 46) and on Internal Revenue Service Publication No. 529. The ruling provides that pension fund contributions required to be paid by union members are deductible where the members acquire no vested pension rights by virtue of the contributions. The publication provides that "[o]ld age pension fund-assessments you pay to remain in the union and to hold a job are deductible."

Respondent disallowed the claimed deductions on the ground that union pension fund contributions are deductible only if there is no assurance that the member will receive either future pension benefits or a return of the contributions. Respondent contends that the Revenue Ruling relied upon by appellant is not applicable in this case because appellant has acquired vested rights by virtue of his contributions. Respondent does concede, however, that the 5 percent of appellant's contributions which are forfeitable if he terminates union membership are not includible in appellant's gross income for the years in question. (See Rev. Rul. 72-94, 1972-1 Cum. Bull. 23.) Accordingly, the proposed assessments must be adjusted to reflect this concession.

Section 17202 of the Revenue and Taxation Code allows the deduction of "ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." Section 17282 of the Revenue and Taxation Code states: "Except as otherwise expressly

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provided in this part, no deduction shall be allowed for personal, living, or family expenses."

The California courts and this board have not previously considered the deductibility of union pension fund contributions. However, sections 17202 and 17282 of the Revenue and Taxation Code are substantially identical to their federal counterparts, sections 162 and 262 of the Internal Revenue Code of 1954. Under such circumstances, the interpretation and effect given the federal provisions are highly persuasive with respect to proper application of the state law. (Holmes v. McColgan, 17 Cal. 2d 426, 430 [110 P.2d 428], cert. den., 314 U.S. 636 [86 L. Ed. 510] (1941); Rihn v. Franchise Tax Board, 131 Cal. App. 2d 356, 360 [280 P.2d 893] (1955).)

The federal courts have uniformly held that employee contributions to a pension fund constitute non-deductible personal expenses, rather than deductible business expenses, if the contributions purchase for the employee a vested interest in either comparable future benefits or a return of the contributions. (Simenstad v. United States, 325 F. Supp. 1249 (N.D. Cal. 1971); John P. Davidson, Jr., 42 T.C. 766 (1964).) Moreover, with respect to employee contributions to a union pension fund, it has been held that such contributions are not deductible even though paid as a condition of continued union membership. (Allan G. Kaplan, 1176,024 P-H Memo. T.C. (1976).)

The Revenue Ruling cited by appellant is not inconsistent with the federal court decisions. In the ruling the Internal Revenue Service was asked to decide whether member contributions paid under a union pension plan which did not guarantee the member either future pension benefits or a return of the contributions are deductible. The Service ruled that since the "member has no vested interest in any right to a pension" the contributions are deductible as ordinary and necessary business expenses. (Rev. Rul. 54-190, 1954-1 Cum. Bull. 46, 47.) The position of the Service on the deductibility of union dues and assessments in general was clarified in a later ruling. Specifically, the Service has ruled that such items are deductible as business expenses only if they are used to meet the expenses of labor union activities. If the dues or assessments are used to defray the cost of providing the union members with personal benefits, such as death benefits, they constitute nondeductible personal expenses. (Rev. Rul. 72-463, 1972-2 Cum. Bull. 93.)

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In support of his position on appeal, appellant also relies on the general statement contained in Internal Revenue Service Publication No. 529 which indicates that all old age pension fund assessments paid to remain in a union and to hold a job are deductible. In light of the federal court decisions and Service rulings referred to above, however, it is our opinion that the publication is, in this regard, too broad. While it is unfortunate that appellant may have been misled by the publication, we cannot, on the basis of the record before us, bind respondent to the erroneous information contained in the federal publication. (Cf. Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct. 7, 1974.)

As we have indicated, appellant's contributions to his union pension fund during the years in question purchased for him a vested interest in either future pension benefits equivalent in value to at least the value of the contributions or a return of 95 percent of the contributions. Accordingly, respondent's action in disallowing appellant's deductions for the contributions must be sustained. However, the proposed assessments resulting from that action must be adjusted to reflect respondent's concession that 5 percent of the contributions are not **includible** in appellant's gross income for the years in question.

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,

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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 Allan B. Crane against proposed assessments of additional personal income tax in the amounts of \$66.50, \$47.46 and \$29.00 for the years 1972, 1973 and 1974, respectively, be and the same is hereby modified to reflect respondent's concession. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 29th day of June, 1978, by the State Board of Equalization.

Chairman
 Member
 Member
 Member
 Member