

Appeal of Ronal J. and Elfriede M. Baker

The issues presented by this appeal are: (i) whether appellants were entitled to a moving expense deduction in 1977; and (ii) if not, whether appellants are entitled to a trade or business expense deduction for their moving expenses.

Appellants now reside in Klamath Falls, Oregon. On their joint California personal income tax return for 1977, appellants claimed a deduction in the amount of \$2,533.39 for moving expenses incurred when they moved from California. They received no reimbursement of those expenses. Respondent disallowed the claimed moving expense deduction, thereby resulting in this appeal.

Section 17266 of the Revenue and Taxation Code allows a deduction for certain designated moving expenses. Subdivision (d) of that section limits the deduction where such expenses are incurred in connection with an interstate move by providing, in relevant part:

(d) In the case of an individual ... whose former residence was located in this state and his new place of residence is located outside this state, the deduction allowed by this section shall be **allowed** only if any amount received as payment for or reimbursement of expenses of moving from one residence to another residence is includable in gross income as provided by Section 17122.5 and the amount of deduction shall be limited only to the amount of such payment or reimbursement or the amounts specified in subdivision (b), whichever amount is the lesser.

Here appellants moved from California to a new residence located outside this state; they were not reimbursed by appellant-husband's new employer for their moving expenses. In numerous prior opinions, we have held that, absent reimbursement of the expenses of an interstate move, a taxpayer is not entitled to any moving expense deduction. (See, e.g., Appeal of Thomas A. and Jo Merlyn Curdie, Cal. St. Bd. of Equal., June 29, 1978; Appeal of Norman L. d Penelope A. Sakamoto, Cal. St. Bd. of Equal., May 10, 1977.)

Appellants argue that their moving expense deduction should be allowed because they temporarily returned to California after their move to Oregon when the anticipated sale of their residence in this state failed to take place. Appellants have cited no authority, nor are we aware of any, which would allow their moving expense

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deduction under such circumstances. Appellants also contend that since respondent initially made certain mathematical corrections to their 1977 return by means of a notice of tax computation change issued April 14, 1978, they should not be penalized by being required to pay interest on the deficiency later assessed. A similar contention was considered and rejected by this board in the Appeal of Thomas A. and Jo Merlyn Curdie, supra. For the reasons stated therein, we find appellant's argument to be without merit.

Having concluded that appellants were not entitled to a moving expense deduction for the year in issue, we now address their alternative argument that the expenses incurred in moving to Oregon should be allowed as a trade or business expense. Respondent argues that the costs incurred by appellants relative to their move were personal in nature.

Revenue and Taxation Code section 17202 provides in relevant part as follows:

(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 . . .

Revenue and Taxation Code section 17282 provides:

Except as otherwise expressly provided in [the income tax provisions of the Revenue and Taxation Code], no deduction shall be allowed for personal, living, or family expenses.

These sections are substantively identical to sections 162 and 262, respectively, of the Internal Revenue Code of 1954. Accordingly, federal case law is highly persuasive in interpreting the California statutes. (Rihn v. Franchise Tax Board, 131 Cal.App.2d 356, 360 [280 P.2d 893] (1955).)

Prior to the enactment of section 17266, the reimbursement of moving and other relocation expenses of a new employee by his new employer was treated as the income of the employee-taxpayer on the ground that it constituted a bonus or other inducement to take the new position. The expenses actually incurred under such circumstances were treated as nondeductible on the ground that they constituted nondeductible living expenses. (Leonard F. Longo, ¶ 64,055 P-H Memo. T.C. (1964); Baxter D. McClain, 2 B.T.A.

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726 (1925).) On the other hand, the allowance or reimbursement of an existing employee for such relocation expenses incurred in the course of a transfer in the interest of his employer was not treated as includable in the employee's gross income on the ground that the move was for the employer's convenience. (John E. Cavanagh, 36 T.C. 300 (1961).) Subject to the provisions of subdivision (d) quoted above, the enactment of section 17266 ended this discriminatory treatment against new employees and employees who were not reimbursed for their moving expenses by their employers.

The question of whether moving and other relocation expenses of a new employee should be treated as though incurred in the performance of one's trade or business, and thereby be deductible under section 162 of the Internal Revenue Code, was addressed by the courts prior to the enactment of Internal Revenue Code section 217 (the federal counterpart to section 17266, less the limiting provisions of subdivision (d) of the latter section). The courts uniformly held that such expenses of a new employee constituted nondeductible personal expenses. (United States v. Woodall, 255 F.2d 370 (10th Cir. 1958); Leonard F. Longo, supra; Baxter D. McClain, supra.) There is no authority upon which we can base a contrary opinion.'

It has long been recognized-that deductions are matters of legislative grace, allowable only when there is a clear provision for them. (McDonald v. Commissioner, 323 U.S. 57 [89 L.Ed. 68] (1944); Deputy v. du Pont, 308 U.S. 488 [84 L.Ed. 416] (1940).) For the reasons set forth above, we must conclude that respondent properly determined that appellants were not entitled to claim their moving expenses as a trade or business expenses deduction. Furthermore, as discussed above; they were specifically prohibited from claiming those expenses as a moving expense deduction. Since there exists no clear provision whereby appellants may deduct the subject expenses, respondent's action in this matter will be sustained.

