

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
CLIFFORD A. AND)
DOROTHY M. NELSON)

For Appellants: Clifford A. and Dorothy M. Nelson,
in pro. per,

For Respondent: Terry Collins
Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Clifford A. and Dorothy M. Nelson against proposed assessments of additional personal income tax in the amounts of \$352.01, \$514, and \$331 for the years 1978, 1979, and 1980, respectively, and pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying, to the extent of \$648, the claim of Clifford A. and Dorothy M. Nelson for refund of personal income tax for the year 1981.

Appeals of Clifford A. and Dorothy M. Nelson

The question presented for our resolution is whether appellants have demonstrated that they were entitled to claimed deductions for charitable contributions for the years 1978 through 1981, inclusive,

Appellants are a retired couple who filed joint California personal income tax returns for the years at issue. On their returns for the years 1978, 1979, 1980, and 1981, appellants claimed charitable contribution deductions in the sums of \$5,208.28, \$7,053, \$6,425., and \$9,101.52, respectively, for cash given to Western Life Science Church 'in San Clemente, California. Appellants submitted copies of cancelled personal checks bearing the stamped endorsement of the church to document their cash contributions. In two separate decisions, respondent disallowed the claimed deductions in their entirety based on its determination that Western Life Science Church was not an organization granted exemption from California tax under section 23701 of the Revenue and Taxation Code. The disallowance of the deduction claimed in 1981 was treated by respondent as a partial denial of appellant's claim for refund of personal income tax previously paid. Appellants have appealed this denial as well as the denial of their protest against the proposed assessments resulting from the disallowance of the deductions in the earlier three years. Both matters have been consolidated herein for purposes of appeal,

As a preliminary matter, we repeat well-settled law that deductions are a matter of legislative grace, and the taxpayer bears the burden of proof to demonstrate his entitlement to the claimed deduction, (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 13481 (1934)]; Appeal of James C. and Monablanche A. Walshe, Cal. St. Bd. of Equal, Oct. 20, 1975.) In order to carry that burden, the taxpayer must be able to point to an applicable statute and show by credible evidence that he falls within the terms of the statute. (New Colonial Ice Co. v. Helvering, supra; Appeal of Linn L. and Harriett E. Collins, Cal.-St. Bd. of Equal., Nov. 18, 1980.) Unsubstantiated assertions by the taxpayer are not sufficient to satisfy his burden of proof. (Appeal of John R. Sherriff, Cal. St. Bd. of Equal., Dec. 13, 1983; Appeal of Linn L. and Harriett E. Collins, supra; Appeal of Otto L. Schirmer, et al., Cal. St. Bd. of Equal., Nov. 19, 1975.)

Section 17214 of the Revenue and Taxation Code allows a deduction for contributions paid within the taxable year to qualified charitable organizations. This

Appeals of Clifford A. and Dorothy M. Nelson

section contains statutory language which is similar to language found in Internal Revenue Code section 170; which governs the deductibility of charitable contributions for federal income tax purposes. In particular, the definition of a contribution under section 17214 is substantially the same as the definition of a charitable contribution under Internal Revenue Code section 170, subdivision (c). Federal precedent, therefore, is relevant in the proper interpretation of section 17214. (Meanley v. McColgan, 49 Cal.App.2d 203 [121 P.2.d 45] (1942); Appeal of William E. and Eunice M. Klund, Cal. St. Bd. of Equal., April 6, 1977.)

To show entitlement to a charitable contribution deduction, the taxpayer is required to show that the recipient or donee was a qualified exempt organization. (Int. Rev. Code of 1954, § 170(e)(2); Karen Solanne, ¶ 83,067 P-H Memo, T.C. (1983).) For a church to qualify, the taxpayer must prove that the church was organized and operated for religious or other exempt purposes and that no part of the net earnings of the organization inured to the benefit of any private individual, (John Lynn Stephenson, 79 T.C. 995, 1002-1003 (1982); Carl V. McGahen, 76 T.C. 468, 481-483 (1981); Calvin K. of Oakknoll, 69 T.C. 770, 772 (1978), aff'd. per unpublished order, 603 F.2d 211 (2d Cir. 1979); Lyle H. Van Dyke, ¶ 83,190 P-H Memo, T.C. (1983).) These organizational and operational tests for qualification of an organization for exemption are set forth more fully in Internal Revenue Code section 501(c)(3) and the Treasury regulations promulgated thereunder. (See Treas. Reg. § 1.501(c)(3)-1; Carl V. McGahen, supra; Basic Bible Church, 74 T.C. 846, 857-858 (1980); Calvin K. of Oakknoll, supra; compare Rev. & Tax. Code, § 23701d.) In the event that the taxpayer fails to prove that a church meets the organizational and operational tests for exemption, the taxpayer is not entitled to any charitable contribution deductions for amounts given to the church. (John Lynn Stephenson, supra.)

Appellants have essentially made two arguments in favor of the deductibility of their claimed charitable contributions to Western Life Science Church. First, appellants apparently concede that their church has not applied for nor received formal exemption from California or federal tax but assert numerous constitutional objections to the requirement that their church qualify as an exempt organization before their contributions can be deductible. Appellants also urge that disallowance of their claimed deductions is an unconstitutional

Appeals of Clifford A. and Dorothy M. Nelson

infringement upon their free exercise of religion. **These** constitutional objections constitute the gravamen of their appeal. However, we are precluded by constitutional mandate and long-standing policy from addressing such constitutional arguments. (Appeal of Joan Muncaster, Cal. St. Bd. of Equal., April 5, 1984; Appeal of Liselotte Bump, Cal. St. Bd. of Equal., Feb. 1, 1983; Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.)

Second, appellants contend that, while their church may not be tax exempt, it is part of Life Science Church which, appellants assert, is a tax-exempt religious organization. Nothing in the **record**, however, bears out this contention. There is no evidence to suggest that the parent church has been recognized to be exempt or that Western Life Science Church is a chapter of that organization. **Moreover**, even if appellants had made those showings, it does not necessarily follow that the exempt status of one organization entitles another by reason of a charter to qualify for exemption. (See John Lynn Stephenson, supra; Carl V. McGahen, supra; B&sic Bible Church, supra; Geraldine J. McElhannon, ¶ 82,196 P-H Memo. T.C. (1982).) Where there is no indication of a group exemption ruling covering the recipient, its status as a qualified organization to which deductible contributions can be made must be determined independently. (See Appeal of John R. Sherriff, supra; Howard R. Harcourt, ¶ 82,621 P-H Memo. T.C. (1982); Roland Clifford Riemers, ¶ 81,455 P-H Memo. T.C. (1981).)

In the present appeal, appellants have not provided us with any evidence concerning whether Western Life Science Church was organized and operated exclusively for religious or other exempt purposes and that there was no private inurement of its net earnings. The record is bereft of organizational documents indicating what were the purposes of the church, if its assets were dedicated to exempt- **purposes**, or what safeguards were adopted to prevent any proscribed private inurement of its income. (See Charles Owens, ¶ 82,671 P-H Memo. T.C. (1982); Barry R. Schilberg, ¶ 82,336 P-H Memo. T.C. (1982).) **Moreover**, we have no information in regard to the church's physical location, its liturgy, the size of its congregation, or the beliefs and practices of its members. (See Karen Solanne, supra; Richard A. Magin, ¶ 82,383 P-H Memo. T.C. (1982); William A. Young, ¶ 81,109 P-H Memo. T.C. (1981).) In the absence of such evidence showing the qualifying status of Western Life Service Church, **appellants'** copies of cancelled checks and their

Appeals of Clifford A. and Dorothy M. Nelson

unsubstantiated statement that the church performs sacerdotal functions do not form a sufficient basis for us to find that their church was a qualified organization to which deductible charitable contributions could have been made in the years at issue.

Based upon the foregoing, we find that appellants have not carried their burden of proving their entitlement to the claimed deductions. Accordingly, respondent's action in this appeal must be sustained.

