



Appeal of Terrence J. and Michele Allard

The sole issue presented in this appeal is whether appellant is entitled to deduct as educational expenses certain payments for flight-training expenses for which he received nontaxable reimbursement from the Veterans Administration.

During the year in issue, appellant, a veteran who served as a carrier pilot during the Vietnam **War**, was employed as a pilot with United Airlines. In 1978, appellant undertook and completed a **course** of flight training which entitled him to an Airline Transport Pilot rating in a Lear Jet. Because he was a veteran, appellant was eligible to receive reimbursement from the Veterans Administration equal to 90 percent of his training costs. Appellant, in fact, received \$10,467 from the Veterans Administration as reimbursement for his training costs. On **his** 1978 California **personal** income tax return, appellant claimed the entire \$11,630 cost of the flight training as an educational expense. Upon reviewing appellant's return, respondent determined that only the portion in excess of the amount reimbursed by the Veterans Administration was deductible under the Provisions of section 17285.

Appellant contends that at the time he filed the return, there was a revenue ruling which provided that a deduction for educational expenses need not be reduced by the amount of any educational benefits paid by the Veterans Administration. (Rev- **Rul.** 62-213, 1962-2 **C.B.** 59.) Appellant further contends that even though this ruling was eventually modified, the subsequent modification should not be allowed to retroactively apply to the period at issue.

Section 17285 provided, in part, that no deduction shall be allowed for:

(a) Any amount otherwise allowable as a deduction which is allocable to one or more classes of income other than interest . . . wholly exempt from the taxes imposed by this part, or any amount otherwise allowable under Section 17252 . . . which is allocable to interest . . . wholly exempt from the taxes imposed by this part,

Under this statute, an amount cannot be deducted if it is allocable to a "**class of tax-exempt income**" other than interest. According to respondent's former **regulation** 17285(a), subdivision (2)(A), repealer filed

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April 16, 1981 (Register 81, No. 16), a class of exempt income includes any class of income wholly excluded from gross income under any law. The reimbursement from the Veterans Administration was exempt from taxation and, therefore, qualifies as a "class of exempt income" for purposes of section 17285.

The exact issue presented in this appeal was addressed by this board in Appeal of Donald M. and Leslie G. Burrows, decided on December 7, 1982. That case involved a veteran who was employed as an airline pilot with Continental Airlines. Like appellant, he had taken a flight-training course which entitled him to an Airline Transport Pilot rating in a Lear Jet. This board held that since the educational costs were allocable to the reimbursement,, that portion of the flight-training expenses reimbursed by the Veterans Administration was allocable to a class of tax-exempt income and **therefore** was nondeductible. In reaching this decision, this board relied on the case of Manocchio v. Commissioner, 78 T.C. 989 (1982), which held that the reimbursed portion of a veteran's flight-training expenses was not deductible. This court's ruling was subsequently upheld by the United States Court of Appeals in Manocchio v. Commissioner, 710 F.2d 140 (9th Cir. 1983).

Appellant has argued that, at the time he filed his return, there was a revenue ruling which stated that a deduction for educational expenses need not be reduced by the amount of any educational benefits paid by the Veterans Administration. (Rev. Rul. 62-213, supra.) Initially, we note that federal revenue rulings are merely the Internal Revenue Service's interpretation of the law and are not binding. (See Appeal of Verne D. and Joanne O. Freeman, Cal. St. Bd. of Equal., June 23, 1981.) The fact that appellant may have erroneously relied on this information is not sufficient to warrant estoppel. (See Appeal of Marvin W. and Iva G. Simmons, Cal. St. Bd. of Equal., July 26, 1982.) Respondent, in denying the deduction, correctly complied with the provisions of section 17285, which is the controlling statute. The fact that the Internal Revenue Service did not formally announce until 1980 that Revenue Ruling 62-213 did not apply to flight-training reimbursement does not require a result in appellant's favor. (See Rev. Rul. 80-173, 1980-2 C.B. 60.)

For the reasons discussed above, we conclude that respondent's action in this matter must be sustained,

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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,

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 Terrence J. and Michele Allard against a proposed assessment of additional personal income tax in the amount of \$897 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 30th day of July , 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

\_\_\_\_\_, Chair  
William M. Bennett, Member  
- Richard Nevins, Member  
-Walter Harvey\*, Member  
\_\_\_\_\_, Member

-\*For Kenneth Cory, per Government Code section' 7.9