

Appeal of Lawrence D. and Barbara L. Parker

The issues presented in this appeal are as follows:

(1) Whether appellants are entitled to deduct as ordinary and necessary business expenses travel expenses incurred for a trip to Europe (by **appellant-wife**) in 1978 and a trip to Alaska in 1979 in excess of what was allowed by respondent.

(2) Whether appellants are entitled to deduct as ordinary and necessary business expenses certain other expenditures incurred by appellant-husband,

(3) Whether appellants are entitled to deduct home office expenditures in excess of those allowed by respondent.

(4) Whether appellants owe interest upon **the** amount of the assessments.

During the years at issue, Lawrence was employed as an English teacher by Mt. San Antonio College while Barbara was employed as a teacher by Walnut Valley Unified School District. During these years, Lawrence taught courses in writing, vocabulary, American and world literature and mythology while Barbara taught educationally handicapped children various subjects at the elementary school level in addition to coordinating the distribution of teaching aids to other teachers at the school.

From June 25, 1978, through August 22, 1978, appellants traveled through Europe, visiting such cities as Frankfurt, Munich, Salzburg, Olympia, Athens, Belgrade, Zurich, and Strasbourg. In addition, from July 11, 1979, through July 29, 1979, appellants traveled through Alaska visiting Fairbanks, Valdez, and Anchorage. On their 1978 personal income tax return, appellants claimed a deduction of **\$8,091.81** for educational expenses incurred during their European trip, while on their 1979 return, appellants claimed a deduction of **\$3,145.23** for educational expenses incurred during their Alaskan trip. Respondent disallowed Barbara's portion of the 1978 **trip^{2/}** and all of the costs of the 1979 trip as being personal in nature.

2/ Lawrence's portion of the expenses associated with **the** European trip were allowed. Accordingly, there is no reason to discuss his involvement with the trip.

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Appellants claimed deductions on their 1978 and 1979 returns for "school supplies" which consisted of the cost of subscriptions to the Los Angeles Times and the Pomona Progress Bulletin newspapers, and expenses incurred in attending various theatrical performances. Respondent disallowed all of these deductions.

Appellants also claimed one-fifth of the total cost of maintaining their five-room house in 1978 and 1979 as deductions for a home office.^{3/} Respondent disallowed \$610.76 of the expenses claimed in 1978 and **\$5,208.92** of the expenses claimed in 1979 as being personal in nature.

In addition, since filing this appeal, appellants have objected to continuing accrual of interest on the entire assessment while the case is on appeal.

A. TRAVEL EXPENSE

Section 17202 allows an individual to deduct all "ordinary and necessary" business expenses. (Rev. & Tax. Code, § 17202, subd. (a).)^{4/} During the years at issue, educational expenses were deductible as business expenses if the education was undertaken primarily either to maintain or improve skills needed by the taxpayer in his employment or business, or to meet the employer's requirements, applicable law, or regulations imposed as a condition for the taxpayer's retention of his employment status, or salary.^{5/}

3/ Appellants deducted one-fifth of the expenses of heating, electricity, telephone, repairs, and furniture amounting to \$849.50 in 1978 and **\$5,508.60** in 1979.

4/ As section 17202 conforms to Internal Revenue Code section 162 and since there are now no regulations of the Franchise Tax Board in this area, the regulations under section 162 of the Internal Revenue Code govern the interpretation of section 17202. (Cal. Admin. Code, tit. 18, reg. 19253.)

5/ Appellants have not claimed that the trips at issue were taken to meet the employer's requirements, applicable law, or regulations imposed as a condition for the retention of their employment, status, or salary.

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Education expenses were not deductible if the education was undertaken primarily for the purpose of fulfilling the general educational aspirations or other personal purposes of the taxpayer. (Treas. Reg. § 1,162-S (b)(1).)

Expenditures for travel as a form of education are deductible only to the extent that expenditures are directly related to the duties of the individual in his employment. Moreover, the approval of a travel program by an employer is not determinative that the required relationship exists between the travel involved and the duties of the individual, (Treas. Reg. § 1.162.5 (d).)

The burden of proving that such expenditures are deductible is on the taxpayer. (Appeal of Edward and Christine Kenna, Cal. St. Bd. of **Equal.**, Dec. 13, 1983.) We have **stated before that** in order to satisfy their burden, taxpayers:

must show that the major portion of [their] time while traveling was spent not on ordinary tourism, but on activities which were so **uniquely** tailored to strengthen [their] teaching abilities that the expenditures **therefor** are excepted from the general rule that educational travel is to be considered primarily personal in nature and therefore **nondeductible**.

(Appeal of Bernice V. Grosso, Cal. St. Bd. of Equal., Aug. 1, 1980.)

Although the 1979 return notes that the purpose of Barbara's European expenditures was "for general cultural enrichment" (Resp. Br., **Ex. G**), appellants **apparently** now contend that her European travel was directly related to her duties as an elementary school teacher. For example, appellants note that some of the objectives for elementary school teachers are to understand political, economic and social patterns of the rest of the world; to understand ongoing changes in the **world community**; and to recognize the wide diversity of the world's peoples. Barbara also argues that the pictures which she took in Europe and her Alaskan trip in 1979 supplement information in assigned books which discuss both Europe and Alaska. Moreover, Lawrence notes that many of the places which he visited in Alaska had relevance to his teaching of literature. For example, some of the works of Jack

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London were set in Alaska and his visit-apparently gave him a greater understanding of **London's** works.

However, after careful consideration of the whole record, we must conclude that appellants have failed to meet their burden of showing that the expenditures at issue were directly related to their teaching duties. In general, appellants state that the material and information gathered during their trips has been used in their classrooms, and contend that this fact results in the travel expenditures being deductible as educational expenses. While the trips no doubt were helpful to appellants, this fact alone does not cause the expenses in question to be deductible as ordinary and necessary business expenses. (Appeal of Edward and Christine Kenna, supra.) Based upon the record before us, we cannot find that the trip to Europe by Barbara or the trip to Alaska by appellants was directly related to maintaining or improving their teaching skills, rather than for personal enjoyment. Accordingly, deduction of these expenses was properly denied.

B. BUSINESS EXPENSES

As indicated above, section 17202 allows a taxpayer to deduct all "ordinary and necessary" business expenses.^{6/} Appellants claim that subscription costs of the Los Angeles Times and the Pomona Progress Bulletin, together with the cost of attending various cultural activities (e.g., theater, **Renaissance Pleasure Faire**, Wine **Festival**, opera workshop) were necessary for Lawrence's primary employment as a teacher of English composition and literature and his secondary occupation as a writer.

It is well settled that deductions are a matter of legislative grace and that a taxpayer must prove that he is entitled to the deductions claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 13481 (1934).]) The aforementioned reading materials are primarily of general interest and would not appear to give any special assistance to one who is a teacher and writer of English composition and literature. (Appeal of Frederick A. Sebring, Cal. St. Bd. of Equal., Dec. 9, 1980.) Moreover,

^{6/} The term ordinary and necessary has consistently been given the connotation of normal, usual, or customary in the particular field involved. (Cardwell v. Commis-sioner, ¶ 82,453 T.C.M. (P-H) (1982).)

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while Lawrence appears to have taught literature classes; he has provided no evidence that the events which he attended were in any way related to the area which he taught. Appellant merely states that he must remain informed about the current theater. (App. Reply Br., Ex. P.) A remote or incidental business connection is not sufficient. (Cardwell v. Commissioner, ¶ \$2,453 T.C.M. (P-H) (1982).) Based upon the record before us, we are unable to find that appellants have satisfied their burden of proving that any of the expenditures at issue are allowable deductions.

C. HOME OFFICE DEDUCTION

As indicated above, appellants claim they are entitled to a deduction pursuant to section 17299.3 for ~~home-office~~ expenses greater than was allowed by respondent. ^{7/}

Section 17299.3 generally disallows a business expense deduction with respect to the business use of a home or residence, (Rev. & Tax, Code, § 17299.3, subd. (a).) The exceptions to this rule are set out in section 17299.3, subdivision (c), which provides in relevant part that the disallowance provisions will:

not apply to any item to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis . . . [a]s the taxpayer's principal place of business, . . .

Appellants have the burden of proving that they are entitled to the deductions claimed under the above provisions. (Welch v. Helvering, 290 U.S. 111 [78 L.Ed. 212] (1933).) Accordingly, appellants can prevail only if they demonstrate that Lawrence exclusively and regularly used the subject room as the principal place of his writing business. Based on the record before us, it is questionable whether Lawrence used the subject room exclusively for his writing activities. (Harris v. Commissioner, ¶ 83,494 T.C.M. (P-H) (1983).) We note that appellants* house had only five rooms. To exclusively devote approximately one-fifth of that space to an

^{7/} On appeal, Lawrence alleges that he used the home office as the principal place of business for his writing activities from which he generated \$337.50 of income in 1978, but no income in 1979.

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activity that generated only \$337.50 of income over two years is not only unsupported in the record but also highly unlikely. Accordingly, we must hold that section 17299.3 prohibits appellants from deducting home-office expenses in amounts larger than respondent has allowed.

D. INTEREST

On appeal, appellants protest the full accrual of interest on the unpaid taxes and contend **that** interest on additional tax which they had agreed to pay by letters dated October 19, 1982, and February 13, 1983, should be accrued only to the dates of those letters. Section 18688 provides, however, that interest accrues on a deficiency "from the date prescribed for the payment of the tax until the date the tax is paid." Interest is not a penalty, but is compensation for the use of money during the **period** of deficiency. (Appeal of Patrick J. and Brenda L. Barrington, Cal. St. Bd. of Equal., Jan. 11, 1978.) Accordingly, respondent's assessment of interest must also be sustained.

For the reasons stated above, **respondent's** action must be sustained.

