



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JIM W. TWENTYMAN) No. 82A-1247-MA)

Appearances:

For Appellant: Jim W. Twentyman,
in pro. per.

For Respondent: Timothy W. Boyer
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Jim W. Twentyman against proposed assessments of additional personal income tax in the amounts of \$275.48 and \$2,532.91 for the years 1976 and 1977, respectively.

1/ Unless otherwise specified, all section references are to sections Of the Revenue and Taxation Code as in effect for the years in issue.

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There are three issues involved in this appeal. First, whether appellant has established that he is entitled to certain employee business expense deductions. Second, whether respondent properly disallowed income averaging for taxable year 1977. Third, whether appellant is entitled to a deduction for payment of state disability insurance (SDI).

-Appellant is a **commodities** broker who filed timely returns for 1976 and 1977. Appellant claimed deductions in the amounts of \$5,785 and \$17,529, respectively, for the years 1976 and 1977, for various business expenses incurred in connection with his activities as a commodities broker. Respondent allowed \$2,227 of the 1976 deductions and \$12,851 of the 1977 **deductions** but disallowed the remaining deductions on the grounds appellant failed to show entitlement or failed to substantiate the business purpose of the expense. For 1976, respondent disallowed \$286 of telephone expenses, \$806 of moving expenses, \$1,966 of automobile and travel expenses, and **\$500** of entertainment expenses. For 1977, respondent disallowed \$68 of a job interview expense, \$528 of appellant's claimed charitable contributions, \$2,482 of automobile and travel expenses, and \$1,600 of advertising expenses. @

On his 1977 return, appellant utilized the income averaging provisions found in section 18243 in computing his income tax liability. Respondent disallowed the income averaging after finding that appellant, having left this state in **March** 1975 and not returning until October 1975, was not a resident for all of the five base years involved in the income averaging formula as required in section 18243.

The third issue, that of appellant's deduction of SDI, was conceded by appellant at the hearing and will not be addressed further in this appeal. (**Tr.** at 3.)

Expenses

Following a protest hearing in which appellant presented further evidence to substantiate his claimed business expense deductions, respondent revised its original assessment and allowed certain additional claimed deductions. The remainder of the deductions, which are the subject of this appeal, were disallowed on the grounds that appellant did not provide evidence to substantiate his entitlement to the deductions, as follows:

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	1976		
<u>Item</u>	<u>Amount Claimed</u>	<u>Amount Allowed</u>	<u>Amount Disallowed</u>
Telephone Expense	\$ 357	\$ 71	\$ 286
Moving Expenses	944	138	806
Automobile Expenses	3,310	1,800	1,510
Travel Expenses	674	218	456
Entertainment Expenses	500	-0-	500
TOTAL	<u>\$5,785</u>	<u>\$2,227</u>	<u>\$3,558</u>

	1977		
<u>Item</u>	<u>Amount Claimed</u>	<u>Amount Allowed</u>	<u>Amount Disallowed</u>
Job Interview	\$ 150	\$ 82	\$ 68
Promotional Gifts	225	225	-0-
Contributions	29	301	528
Travel Expenses	6,417	6,043	374
Automobile Expenses	3,908	1,800	2,108
Advertising	6,000	4,400	1,600
TOTAL	<u>\$17,529</u>	<u>\$12,851</u>	<u>\$4,678</u>

It is fundamental principle of tax law that deductions are matters of legislative grace and that taxpayers have the burden of clearly showing their right to the deductions they claim. (New Colonial Ice Co. v. Eielvering, 222 U.S. 435 [78 L.Ed. 1348] (1934); Appeal of Jack and Jacoba Turfryer, Cal. St. Bd. of Equal., Feb. 6, 1973; Appeal of William W. and Marjorie L. Beacom, Cal. St. Bd. of Equal., Oct. 6, 1976.) Appellant has offered no additional evidence to substantiate the amounts claimed. As appellant has not established that he is entitled to additional deductions for the above items, we must conclude that respondent's disallowance of the unsubstantiated portion of these deductions should be sustained. While we recognize that there are legitimate expenses which are incurred in a business, such as appellant's, it nevertheless remains necessary that some documentation be provided to show that these expenses were actually incurred. **Appellant has** not done so. Two deductions were disallowed for further reasons. With respect to the 1977 advertising expense, the purchase of the mailing list, appellant has not established why

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\$1,600 of the total \$6,000 payment claimed was paid to Phil Aoffman Associates, rather than the seller of the list, Trident Systems. The only evidence provided is his unsupported, self-serving statement that Trident Systems was the agent of Phil Hoffman Associates, yet he had previously indicated to respondent that there was no relationship between Phil Hoffman Associates and Trident Systems. With regard to the 1977 moving expense deduction, section 17266 contains no provision for the deduction of the security deposit or the last month's rent. (Appeal of Harold J. and Jo Ann Gibson, Cal. St. Bd. of Equal., Oct. 6, 1976.) Therefore, respondent's disallowance of these claimed deductions is also sustained.

Income Averaging

Respondent contends that appellant is not entitled to income averaging for taxable year 1977 because he was a nonresident of California during part of one of the base period years--1975. Section 18242 provides for income averaging over the computation year and the four preceding base period **years**. Section 18243 provides that to be eligible for income averaging, an individual must have been a resident of California during the entire period of the computation and base period years. (Appeal of Thomas M. and M. Snyder, Cal. St. Bd. of Equal., Augo 1, 1980.) To be entitled to income averaging for 1977, appellant must have been a California resident for the entire period from 1973 through 1977. As appellant filed a part-year resident return for taxable year 1975, respondent submits he is not eligible for income averaging for 1977.

On September 17, 1979, respondent inquired further into appellant's 1975 residence status, with respect to his eligibility for income averaging. In reply, appellant provided a completed residency questionnaire, as well as documents indicating activities in California on or after October 31, 1975, the date on which appellant apparently returned to California. (See Resp. Ex. C.)

Appellant states he first moved to California in March, 1972. The evidence indicates he **left California** on **or**about March 15, 1975, and returned October 31, 1975. Of particular relevance to our inquiry is that he filed a part-year resident return for 1975 which was financially beneficial to him. Under the circumstances, we must conclude that he was not a resident for all of 1975 and as such, we must conclude that he was not

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entitled to the income averaging provisions of section 18242 for the five-year period which includes 1975.

For the reasons stated above, respondent's action in this matter is sustained.

