



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
ALICE H. LESTER }

Appearances:

For Appellant: C. G. Heimerdinger, Attorney at Law.

For Respondent: James J. Arditto, Franchise Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 20 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in denying in part a claim for refund of personal income tax in the amount of \$3,220.39 for the taxable year 1936.

The taxpayer, an incompetent person, filed her return for 1936 by her guardian. The Commissioner concedes the propriety of making certain adjustments to the reported gross income, as asserted in the claim for refund. He has disallowed, however, the deduction of certain expenses claimed in the return in the amount of \$15,807.38. Those expenses, paid in the administration of the Appellant's estate for the purpose of conserving the estate and realizing income therefrom, include compensation of the guardian and his attorneys, premium on the surety bond of the guardian, fee of the custodian of the estate assets, fees for the appraisal of certain real and personal property of the estate, salary of a bookkeeper, and miscellaneous cash disbursements of the attorneys on behalf of the estate. The Commissioner contends that the taxable net income for the year 1936 should be \$31,586.75 rather than \$15,779.37 and that Appellant's tax has been overpaid in the sum of \$2,422.70 rather than in the sum of \$3,220.39 as claimed by her.

We are concerned herein with the application of Section 8(a) of the Personal Income Tax Act as originally enacted in 1935, allowing the deduction of all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business. The question presented is whether the expenses of the guardian in administering the estate are expenses incurred in carrying on a trade or business.

This issue was settled adversely to the Appellant in the case of Meanlev v. McColgan, 49 Cal. App. (2d) 203. The Court held therein that the provisions of Section 8(a) of the Personal Income Tax Act, authorizing a deduction for expenses "in carrying

Appeal of Alice H. Lester

on a trade or business", do not apply to the expenses of an executor, such as attorneys' fees for extraordinary services incurred in handling personal investments of the testator. The Court stated, in effect, that even though the activities are aimed at producing income, such activities do not, as a matter of law, constitute the carrying on of a business. Higgins v. Commissioner of Internal Revenue, 312 U.S. 212, holding that the expenses of an individual in managing his investments in stocks and bonds **were not deductible** for federal income tax purposes as business expenses, was cited by the Court in support of **its conclusion**, although it was recognized that while entitled to great weight it was not of binding authority as to the proper construction of the State statute.

The Appellant refers to the construction placed on the provisions of the federal income tax law (after which Section 8(a) was patterned) by the United States Treasury Department to the effect that fees, compensation and expenses incurred by persons administering estate of incompetent persons are allowable deductions for income tax purposes. It is argued on her behalf that this long-continued construction should be regarded as the law of this State in view of the rule of statutory construction that the enactment of a statute which is copied from a statute of another jurisdiction after it has been construed by the officers of such jurisdiction charged with the enforcement thereof constitutes an implied adoption of the construction unless it is plainly erroneous. It is also contended that this administrative construction was so well recognized that the Commissioner **included** it in Article 8(a)-12 of the Regulations which he issued under the Personal Income Tax Act, as amended in 1937.

It is readily apparent, however, that the Appellant's argument is but a criticism of the result reached in the Meanley case which now represents the rule of decision of the courts of this State insofar as the law as enacted in 1935 is concerned. We must be guided by that decision. Furthermore, it should be noted that Section 8(a), as amended in 1943, now allows as a deduction from gross income

"All the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income."

This amendment was obviously made by the Legislature for the purpose of overcoming the results of the Meanley case. The language conforms to Section 121(a)(2) of the Revenue Act of 1942, enacted by Congress following the decision of the United States Supreme Court in the Higgins case.

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,

Appeal of Alice H. Lester

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in **allowing** a refund of tax to Alice H. Lester in the amount of \$2,422.70, rather than in the amount of \$3,220.39 as claimed by said Alice H. Lester) for the taxable year 1936, pursuant to Chapter 329, Statutes of 1935, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of May, 1944,
by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
Geo. R. Reilly, Member
Harry B. Riley, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary