



BEFORE THE STATE BOARD OF EQUALIZATION

Oii THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
GEORGE KOCH and ADA KOCH)

Appearances:

For Appellant: George Koch

For Respondent: Burl D. Lack, Chief Counsel;
Hebard P. Smith, Associate
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 protests of George and Ada Koch to proposed assessments of additional personal income tax for the years 1945 and 1946 in the amounts of \$140.76 and \$143.22, respectively, against George Koch, and in the amounts of \$124.07 and \$102.17, respectively, against Ada Koch,

George Koch and his wife, Ada Koch, each owned a one-fifth interest in a family partnership formed in 1944 for the purpose of purchasing and operating the Hotel Durant in Berkeley, California. Since its acquisition the hotel has been operated for the partnership by George Koch. During the years in question Mr. and Mrs. Koch resided at the hotel and Mr. Koch devoted substantially all of his time to supervising its operation. Mr. Koch was an experienced and successful hotel manager. Under his direction the hotel was converted from a residential to a transient hotel and its facilities and services were expanded and improved, all of which materially increased the net profits of the partnership.

Under the arrangement with the partnership Mr. Koch received for his services an annual "salary" of \$4,875, family living quarters in the hotel having a reasonable rental value of \$1,200 per year and reimbursement for his expenses. Mrs. Koch received certain allowances and reimbursements but did not receive compensation for her services. All of these amounts were deducted by the partnership in computing its distributable net income. For the years 1945 and 1946 Appellant and his wife filed

separate personal income tax returns in which each reported as community income one-fifth of the distributable net income of the partnership and one-half of the "salary" received by Mr, Koch.

Mr. and Mrs. Koch received allowances and reimbursements in the aggregate amounts of \$6,130.48 and \$8,616.83 for the years 1945 and 1946, respectively (exclusive of the rental value of the family living quarters not here in controversy). Of these receipts the Franchise Tax Board included in community income the amounts of \$4,056.83 for the year 1945 and \$5,339.67 for the year 1946 and attributed one-half thereof to each spouse. The issue in these appeals is whether the receipt of the amounts in question constituted income to the Appellants.

Miscellaneous expenses incurred by George Koch were reimbursed in the amounts of \$2,718.65 and \$2,540.30 for the years 1945 and 1946, respectively. He contends that all of these expenses were incurred for necessary advertising and promotional purposes. In 1946 Mrs. Koch accompanied a woman friend on a four months automobile tour of the United States and Canada, partly for pleasure and partly for business purposes: During her absence Mr. Koch flew to Chicago to meet her and attend a hotel convention. He remained away approximately one week. The partnership paid \$2,287.10 of the combined expenses of these trips, One-half of the purported advertising and promotional expenses and \$1,007.50 of the travel expenses were determined by the Franchise Tax Board to constitute personal expenses.

The cost of Mr. Koch's meals in the hotel dining room amounted to \$545.58 and \$497.05 for the years 1945 and 1946, respectively, Mrs. Koch received a "food allowance" of \$949.62 for the year 1945 and \$1,127.34 for the year 1946. A "room allowance" for Mrs. Koch amounted to \$854.63 and \$1,078.43 for the years 1945 and 1946, respectively. The Franchise Tax Board determined that all of these sums constituted income to the Appellants.

The items of reimbursement relating to advertising and promotional expenses and the travel expenses may be considered together. As to these items Appellants had the burden of proving that the amounts received were used for expenses incurred in carrying on the partnership business. (Hiram C. Wilson, 17 B.T.A. 976; N. H. Van Sicklen, Jr., 33 B.T.A. 544; J. C. NICHOLS, 42 B.T.A. 618.) This he has failed to do. We have not been presented with the amounts, dates or nature of the various expenditures for advertising and promotional purposes. Mr. Koch has merely stated generally that such expenditures were for contributions, entertainment and attendance at various functions, a portion of which could well constitute personal expense.

Similarly, he has failed to present any evidence to show the total cost of the 1946 travel or the basis used in determining the proportionate share of such expense attributed to partnership business. Without substantial evidence before us upon which to reach a contrary conclusion, we must sustain the determination of the Franchise Tax Board with respect to these items.

It appears from the evidence that Mr. Koch's residence at the hotel was essential to its management, and that it was a necessary incident to the proper performance of his duties that he receive his meals there. Under this state of facts, the cost of meals furnished to him was not **includible** in his income. George A. Papineau, 16 T.C. 130. Since it does not appear that Mrs. Koch took a substantial part in the management of the hotel the same reasoning does not apply to her situation and the amounts of her "food allowance" were **includible** in income.

Presumably the "room allowance" for Mrs. Koch represented the rental value of rooms, other than the family living quarters, placed at her disposal. As an owner of the building we do not believe the amounts were taxable to her. Helvering v. Independent Life Insurance Co., 292 U.S. 371; George A. Papineau, supra.

Although originally in issue in this appeal, the inclusion in income of reimbursement by the partnership for George Koch's automobile expense, to the extent of 8347.67 and \$359.20, for the years 1945 and 1946, respectively, has been conceded to be correct.

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 13595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of George Koch and Ada Koch to proposed assessments of additional personal income tax for the years 1945 and 1946 in the amounts of \$140.76 and \$143.22, respectively, against George Koch, and in the amounts of \$124.07 and \$102.17, respectively, against Ada Koch be, and the same is hereby modified as follows: the assessment against George Koch shall be recomputed, omitting from his income the sums of \$700.11 and \$787.74 for the years 1945 and 1946, respectively; the assessment against Ada Koch shall be recomputed, omitting from her income the sums of \$700.10 and \$787.74 for the years 1945 and 1946, respectively; in all

other respects said action is hereby sustained.

Done at Los Angeles, California, ~~this~~ 7th day of
October, 1952, by the State Board of Equalization.

_____, Chairman

Wm. G. Bonelli, Member

J. H. Quinn, Member

Geo. R. Reilly, Member

Thomas H. Kuchel, Member

ATTEST: Dixwell L. Pierce, Secretary