



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter, of the Appeal of)
HAROLD AND SYLVIA, PANKEN)

For Appellants: Harold Ira Panken, in pro. per.:

For Respondent: Crawford H. Thomas
Chief Counsel

John D. Schell
Counsel

O P I N I O N - -

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Harold and Sylvia Panken against a proposed assessment of additional personal income tax in the amount of \$75.04 for the year 1967.

Sometime during 1967 appellants moved from Westwood, California, to New York City, incurring moving expenses of \$1,255.00. Appellants claimed a deduction for these moving expenses when they filed their 1967 California personal income tax return. After auditing this return, respondent disallowed the deduction on the grounds that appellants' old and new residences were not both located in California, as required by Revenue and Taxation Code section 17266, subdivision (c)(1)(C). Respondent thereupon issued a proposed assessment of additional tax, and appellants took this appeal from the denial of their protest against that assessment.

Appellants point first to the fact that both the federal government and the State of New York allowed the deduction denied by respondent. It is sufficient to say, however, that the propriety of the claimed deduction for California tax purposes is to be determined under the

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California Personal Income Tax Law. Since appellants have failed to satisfy one of the prerequisites for the deduction provided in section 17266, they are not entitled to that deduction. The actions taken by the federal government and the State of New York have absolutely no bearing on this determination under a California statute.

Appellants' principal contention is that subdivision (c)(1)(C) of section 17266 is unconstitutional and unenforceable because it interferes with the free movement of interstate travelers. This identical argument was made in the Appeal of Albert E. and S. Jean Horsey Cal. St. Bd. of Equal., decided June 2, 1971, and we disposed of it there by invoking our well established policy of declining to rule on constitutional questions raised in appeals involving deficiency assessments. This policy is based upon the absence of any specific statutory authority which would allow the Franchise Tax Board to obtain judicial review in a case of this type, and we believe that such review should be available for questions of constitutional importance. (Appeal of C. Pardee Erdman, Cal. St. Bd. of Equal., Feb. 18, 1970.)

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 Harold and Sylvia Panken against a proposed assessment of additional personal income tax in the amount of \$75.04 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of September, 1971, by the State Board of Equalization.

, Chairman
 , Member
 , Member
 , Member
 , Member

ATTEST: , Secretary