*75-SBE-007*

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )
)
KARL, JR., AND MARGARET HAGG )

For Appellants: Karl Hagg, Jr., in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

John A. Stilwell, Jr.
Counsel

## OPINION

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 Karl, Jr., and Margaret Hagg against proposed assessments of additional personal income tax in the amounts of $48.00 and $138.00 for the years 1970 and 1971, respectively.

The issue presented is whether appellants were entitled to deductions based upon claimed "donations" of unemployment insurance benefits to the State of California.

Karl Hagg, Jr. (hereafter appellant) has been employed for 32 years as a construction worker in California. A characteristic of this occupation is that it has slow seasonal periods when little work is available. In appellant's case, because of the slack seasons, he is consequently unemployed for approximately 10 to 12 weeks each year. Respondent, in its brief, agrees that appellant would qualify for state unemployment compensation benefits although, with one exception, appellant has not sought them. This exception was one time prior to 1970, when for three weeks he did collect unemployment compensation but has ever since ceased doing so, because, in appellant's words, "it seemed awfully degrading. "

On the space provided in appellants' 1970 and 1971 joint state tax returns to report miscellaneous income, "losses" were claimed for unemployment insurance, assertedly, donated to California in the amounts of $910.00 and $780.00, for 1970 and 1971, respectively. On the same returns, however, appellants elected to take a $2,000.00 standard deduction rather than itemize any other nonbusiness deductions (such as interest expense, taxes, other charitable contributions, etc. ) on the schedule provided for such deductions. The Internal Revenue Service audited appellants' federal returns for 1970 and 1971, and made adjustments, including disallowance of the amounts deducted as "donated" to California. When respondent similarly adjusted income, appellants protested. Respondent's denial of the protest gave rise to this appeal.

Appellant contends that he made deductible "donations" benefiting this state each year by not receiving compensation from the state unemployment insurance fund, although he had the right to do so. Appellant explains that the tax benefit he would derive from these deductions is substantially less than the amount he would otherwise have received from the fund.

While the alleged donations were referred to as losses on the returns, and not itemized as charitable contributions on the schedule provided for reporting such contributions, we must conclude that these amounts were claimed as charitable contributions to the state, in view of the use of the word "donated" on the returns and the nature of appellant's contention. Furthermore, there simply is no loss provision in the law that could conceivably apply. These were not losses incurred in a trade or business; incurred in

a transaction entered into for profit; arising from casualty or theft: or of any other nature. (See Rev. & Tax. Code, § 17206. )

Respondent's position is that there were no charitable contributions to the state because the state received no payment; nor did it derive any benefit.

The relevant part of section 17214 of the Revenue and Taxation Code allows as a deduction contributions or gifts to or for the use of any state if made for exclusively public purposes. Similar language is found in federal law. (Int. Rev. Code of 1954, § 170(c). ) Although deductions are a matter of legislative grace and the burden of proof is upon the taxpayer to show that he is entitled to them (New Colonial Ice Co. v. Helvering, 292 U. S. 435. [78 L. Ed. 1348]), a narrow construction is to be avoided when reviewing alleged charitable contributions because of the public policy to encourage such donations. (Helvering v. Bliss, 293 U. S. 144 [79 L. Ed. 246]; Old Colony Trust Co. v. Commissioner, 301 U. S. 379 [81 L. Ed. 1169]. )

With this background in mind, it is nevertheless clear that appellant ***is not*** entitled to the deductions. The purpose of unemployment insurance is to stabilize the economy by supporting the purchasing power of persons unemployed through no fault of their own (Unemp. Ins. Code, § 100), and to protect employees against seasonal, cyclical, and technological idleness. (Chrysler Corp. v. California Employment Stabilization Commission, 116 Cal. App. 2d 8 [253 P. 2d 68]. ) Any waiver of the benefits is invalid, and the benefits are not subject to assignment, release, commutation, attachment, or execution. (Unemp. Ins. Code, § 1342. ) In view of the purpose of unemployment compensation benefits and the statutory restrictions imposed, appellant cannot be regarded as making charitable contributions to the state by claiming that he has waived benefits when waiver is prohibited by statute.

Furthermore, during the appeal years, appellant apparently took none of the affirmative steps in the weeks of unemployment, such as filing benefit claims, registering for work, reporting at a public employment office, establishing availability for work, and searching for suitable work. These steps are necessary for a finding of eligibility for benefits by the

director of the state agency administering the unemployment insurance program. (Unemp. Ins. Code, § 1253.) Consequently, we are not persuaded that appellant's rights became vested in the monetary amounts claimed to the extent that he could "donate" them to the state.

Moreover, where a taxpayer elects to take the standard deduction, this must be done in lieu of itemizing nonbusiness deductions (such as charitable contributions). No other deductions from gross income are allowed except deductions allowable in computing adjusted gross income. (Rev. & Tax. Code, § 17171.) Since the standard deduction was elected, appellants would not additionally be entitled to a charitable contribution otherwise allowable.

For the foregoing reasons, we must sustain respondent's action in denying the deductions, notwithstanding the sincere motivation of appellant in refusing to seek unemployment compensation benefits.

## ORDER

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 Karl, jr., and Margaret Hagg against proposed assessments of $48.00 and $138.00 for the years 1970 and 1971, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of January, 1975 by the State Board of Equalization.

John W. Lynch, Chairman

_____, Member

Gillingham K. Bennett, Member

George R. Reilly, Member

_____, Member

ATTEST: W. W. Dunlop, Secretary