



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DENNIS G. AND PATRICIA A. DAVIS }

Appearances:

For Appellants: Dennis G. Davis,
in pro. per.

For Respondent: Kendall E. Kinyon
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Dennis G. Davis and Patricia A. Davis for refund of personal income tax in the amount of \$476.65 for the year 1971.

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The questions presented by this appeal are whether appellants have substantiated deductions for employment-seeking expenses and for a theft loss and whether a penalty was properly assessed for the failure of appellants to furnish information requested by respondent. These deductions and the penalty (and other matters) were previously presented to the Board in the Appeal of Dennis G. Davis, Cal. St. Bd. of Equal., October 6, 1976. Appellants, husband and wife, filed a joint personal income tax return for 1971. So-in this appeal from the denial of their claim, Mr. Davis represents both himself and his wife.

Appellants argue that respondent, in denying their claim for refund, improperly disallowed a \$1,600 deduction for travel expense incurred on appellant-husband's job seeking trip to Germany from August 17 to October 31, 1971. Appellant has submitted a trip expense log to substantiate the deduction. Respondent's position is that the log is insufficient substantiation because it does not contain the year, the places the expenses were incurred, nor the identities of the potential employers contacted by appellant-husband. Furthermore, the log was unaccompanied by any receipts for lodging, for meals, for transportation, or by any evidence of prospective employer contacts.

Travel expenses are deductible from gross income if they are incurred primarily for the purpose of seeking employment in the same trade or business in which the taxpayer was already engaged; but travel expenses are not deductible if they are incurred for the purpose of seeking employment in a new trade or business. (Rev. & Tax. Code, § 17202; Rev. Rul. 120, 1975-1 Cum. Bull. 55.) Further, section 17296 of the Revenue and Taxation Code provides that "[n]o deduction shall be allowed ... for any traveling ... expenses unless substantiated by adequate records or by sufficient evidence which corroborates the taxpayer's own statement." Deductions are a matter of legislative grace, and it is well settled that the taxpayer has the burden of proving he is entitled to the deductions **claimed.** (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed.1 (1934); Appeal of James M. Denny, Cal. St. Bd. of Equal., May 17, 1962.])

The described expense log book does not corroborate appellant's statement that a certain amount of-travel expense was sustained in 1971 for the purpose

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of obtaining employment of the **type necessary** to qualify the expenses for deduction.

Appellants argue also that respondent improperly disallowed a \$300 deduction for a theft loss which resulted from their 1964 sale of a Matchless motorcycle for \$300. Appellants have a letter from the buyer indicating appellants would be paid. But appellant's have attempted to take the loss deduction in 1971 although they had not heard from the buyer since 1966.

During the year on appeal, Personal Income Tax Regulation 17206(a) provided, in part:

"To be allowable as a deduction under Section 17206(a), a loss must be evidenced by closed and completed transactions, fixed by identifiable events, and actually sustained during the taxable year. ... The amount of the loss allowable as a deduction under Section 17206(a) shall not exceed the amount prescribed by Regulation 18041(a) as the adjusted basis for determining the loss from the sale or other disposition of the property involved ..." (Cal. Admin. Code, Tit. 18, Reg. 17206(a)(2) & (3).)

Appellants have not established that a theft occurred. In any event, if the transaction resulted in a theft loss, the deduction could only be taken for the year in which the loss was discovered. (Curtis Gallery & Library v. United States, 241 F.Supp. 312 (S.D. Cal. 1964).) Appellants have not offered any evidence why the theft loss was discovered in 1971, which is seven years after the sale and five years after appellants last heard from the purported buyer. Nor has any evidence been offered as to the proper basis of the property for the purposes of calculating a theft loss deduction. So appellants have not met their burden of showing that they were entitled to a theft loss deduction of any particular amount in the year in question.

Finally, appellants argue that respondent improperly denied their claim for refund for the amount of the penalty imposed by respondent under Section 18683 of the Revenue and Taxation Code as a consequence of appellant's failure to furnish information requested by respondent. This board has already decided that the penalty was properly assessed. (Appeal of Dennis G.

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Davis, supra.) Appellants have introduced no new evidence to compel a review of this issue.

We **must** find, therefore, that respondent properly denied appellant's claim for refund. .

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Dennis G. Davis and Patricia A. Davis for refund of personal income tax in the amount of \$476.65 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of May, 1981, by the State **Board of Equalization**, with all Board members present.

Ernest J. Dronenburg, Jr., Chairman
George R. Reilly, Member
William M. Bennett, Member
Richard Nevins, Member
Kenneth Cory, Member