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Appeal of Jef'frey B. and Helene Graber

The issue presented in this appeal is whether appellants are entitled to the claimed deduction for a contribution to appellant-wife's pension plan.

During 1980, appellant-wife earned net income of \$432 from self-employment. On appellants' 1980 joint California income tax return, they claimed a deduction of \$432 for a contribution to appellant-wife's pension plan; Respondent determined that they were entitled to deduct no more than 10 percent of appellant-wife's income. It, therefore, disallowed the claimed deduction to the extent it exceeded \$43. Respondent issued a proposed assessment reflecting this determination.. Appellants paid the proposed assessment and filed a claim for refund, which was denied. This timely appeal followed.

Under section 17524 of the Revenue and Taxation Code, a self-employed individual may deduct the **lesser** of \$2,500 or 10 percent of his earned income as a contribution to a qualified pension plan. Appellants contend that under section 404 of the Internal Revenue Code, they are entitled to deduct 100 percent of appellant-wife's income as such a contribution and argue that they should be entitled to deduct the same amount for state tax purposes. We **must** reject this argument since section 17524 of the Revenue **and Taxation** Code clearly limits the allowable deduction to 10 percent of earned income. Therefore, appellants are entitled to deduct a maximum of \$43 as a contribution to appellant-wife's pension plan. For the above reasons, we must sustain respondent's action.

Appeal of Jeffrey B. and Helene Graber

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 Jeffrey B. and Helene Graber for refund of personal income tax in the amount of \$35 for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 12th day of September, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. **Collis** and Mr. Bennett present.

Richard Nevins - - - - , Chairman
Ernest J. Dronenburg, Jr. , Member
Conway H. Collis , Member
William M. Bennett , Member
_____, Member