



88-SBE-004

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BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

. In the Matter of the Appeals of)
WILLIAM AND SHELLIE D. CONKLIN,) Nos. 85A-572, 86A-1827-MW
ET AL.) 85A-0328, 84A-1042,
and 86A-0918

For Appellant: Darrell V. Rippy
Attorney at Law

For Respondent: Timothy W. Boyer
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O P I N I O N

These appeals were originally made pursuant to section 18593¹/₁ of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of William and Shellie D. Conklin, Raymond F. and Irene J. Deering, and Waddell, Jr., and Brenda Harrell in the amounts and for the years as follows:

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

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<u>Appellants</u>	<u>Years</u>	<u>Proposed Assessments</u>
William and Shellie D. Conklin 85A-572, 86A-1827	1980	\$1,017.45*
	1981	3,017.77*
	1982	727.95*
	1983	1,360.05*
Raymond F. and Irene J. Deering 85A-0328	1980	435.75*
	1981	926.87*
	1982	934.26*
Waddell, Jr., and Brenda Harrell 84A-1042, 86A-0918	1980	962.85*
	1981	2,628.71*
	1982	2,326.71*
	1983	1,212.64*

*Includes penalties

Subsequent to the filing of these appeals, appellants Raymond and Irene Deering qualified for tax amnesty and paid the tax and interest due. The penalties imposed were withdrawn and, pursuant to section 19061.1 of the Revenue and Taxation Code, their appeal is treated as an appeal from the denial of a claim for refund. Subsequent to the filing of this appeal, appellants Waddell and Brenda Harrell paid the proposed assessments for 1980, 1981, and 1982 in full. Accordingly, pursuant to section 19061.1 of the Revenue and Taxation Code, their appeal for those years is treated as an appeal from the denial of a claim for refund.

The questions presented by these appeals are whether appellants have shown: 1) that they were entitled to deductions for contributions allegedly made to charter chapters of the Universal Life Church (ULC); 2) that reasonable cause existed for their failure to furnish information; 3) that the Franchise Tax Board (FTB) erred in imposing negligence penalties; and 4) that they were entitled to deductions for contributions made to Individual Retirement Accounts (IRA).

All of the appellants filed their California personal income tax returns claiming deductions for contributions

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to the Universal Life Church as follows:

<u>Appellants</u>	<u>Year</u>	<u>Claimed Charitable Contributions</u>
Conklins	1980	\$11,062
	1981	30,641
	1982	12,225
	1983	14,720
Deerings	1980	6,574
	1981	8,480
	1982	10,335
Harrells	1980	12,094
	1981	21,795
	1982	26,044
	1983	10,575

During the **FTB's** review of appellants' returns, appellants' representative stated that the alleged contributions were made to local ULC congregations, and not to the Universal Life Church, Inc. of Modesto, California (**ULC Modesto!**). Appellants' representative also provided the FTB with copies of statements of changes made to appellants' 1981 (and the Deerings' **1980**) federal returns which showed that the Internal Revenue Service (IRS) had disallowed appellants' claimed charitable contributions. The FTB determined that the claimed contributions were made to a local charter chapter of ULC, disallowed the deductions, and assessed negligence penalties pursuant to section 18684. The FTB sent a written demand to the Harrells for more information regarding their alleged contributions for 1980, 1981, and 1982, but the Harrells failed to provide information for 1981 and 1982. The FTB, therefore, imposed an additional penalty for failure to furnish information (pursuant to section 18683) on the Harrells for 1981 and 1982.

The Harrells had also claimed a \$2,000 deduction for a contribution to an Individual Retirement Account (IRA) for 1983. The FTB determined that they were active participants in qualified pension plans during 1983 and disallowed the deduction.

All appellants filed timely protests. The Conklins apparently provided copies of canceled checks made payable to Universal Life Church. Mr. Conklin, however, had endorsed a number of the checks. The **Deerings** and the Harrells apparently presented receipts allegedly

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prepared by ULC Modesto purporting to show periodic contributions to that entity. However, because of various deficiencies, the receipts were considered by the FTB to be of no evidentiary value. The FTB ultimately affirmed the assessments, including penalties, for all the appellants based on the their failure to show error in the **FTB's** determinations.

Under former section 17214,^{2/} deductions are allowed for contributions or gifts paid in a taxable year to or for the use of:

(b) A corporation, or trust, or community chest, fund or foundation--

(1) Created or organized in the United States ... or under the law of ... any state ...;

(2) Organized and operated exclusively for religious ... purposes ...;

(3) No part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(4) Which is not disqualified for tax exemption under section 23701d by reason of attempting to influence legislation.,

Essentially the same requirements are imposed by Internal Revenue Code section 170(c). The maximum allowable contribution deduction is equal to 20 percent of a taxpayer's adjusted gross income. (Former Rev. & Tax. Code, § 17215, repealed and reenacted as § 17241 by AB 36 [Stats. 1983, ch. 4881, operative for taxable years beginning on or after 1/1/83.]

It is well settled that deductions are a matter of legislative grace and that the taxpayer must show that he is entitled to any claimed deduction. (See, e.g., New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 13481 (1934).] The taxpayer must be able to point to an

^{2/} For taxable years subsequent to 1982, section 17214, subdivision (b), was replaced by essentially the same requirements contained in Internal Revenue code §170(c), which has been incorporated into the Revenue and Taxation Code by reference. (AB 36, Stats. 1983, Ch. 488.)

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applicable statute and show by credible evidence, rather than mere assertions, that his claimed deduction comes within the terms of that statute. (New Colonial, Ice Co. v. Helvering, supra, 292 U.S. at 440; Appeal of Linn L. and Harriet E. Collins, Cal. St. Bd. of Equal., Nov., 18, 1980.)

The FTB contends that appellants' contributions are not deductible because the recipients were not organizations described in section 17214 to which tax-deductible contributions may be made. It alleges that appellants were involved in a widespread tax avoidance scheme in which contributions were made to charters of ULC and the contributions were then used by the donors to pay their personal expenses.

Appellants' only argument on appeal is that they made contributions to ULC Modesto, apparently relying on the then tax-exempt status^{3/} of that entity to justify the deductibility of their contributions. We find that appellants were not entitled to their claimed charitable contribution deductions.

Appellants have presented no evidence at all in support of their assertions that their alleged contributions were deductible as charitable contributions. The FTB states that the Deerings and the Harrells provided receipts from ULC Modesto which purported to show contributions to that entity. However, these receipts have not been presented as evidence to this board and, therefore, we are unable to make any independent judgment of them or to consider them as evidence.. The FTB also states that the Conklins provided copies of canceled checks made payable to the Universal Life Church and has appended copies of two of these to its brief as exhibits. Both of these were endorsed by Mr. Conklin. Since these checks were neither made payable to nor endorsed by ULC Modesto, they do nothing to support the Conklins' assertion of charitable contributions to ULC Modesto. Appellants' argument is subverted not only by the total lack of evidence that they made contributions to ULC Modesto, but also by their earlier assertion that their contributions were made to local congregations (or charters) of ULC. With no evidence to the contrary, we find that appellants' alleged contributions were made to local charters rather than to ULC Modesto.

^{3/} ULC Modesto's tax exempt status was revoked by the IRS in 1984 (Announcement 84-90, 1984-36 I.R.B. 32) and, apparently, by the FTB in 1985.

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Numerous courts and this board have ruled that contributions made to 'local charters of ULC are not deductible as charitable **contributions**. These charters have consistently been found to lack the qualifications of charitable organizations because they are used to pay the personal expenses of the organizers. (See, e.g., Rager v. Commissioner, 775 **F.2d** 1081 (9th Cir. 1985), affg. ¶ 84,563 T.C.M. (P-H) (1984); Davis v. Commissioner, 81 **T.C.** 806 (1983), affd. by unpub. opn., 767 **F.2d** 931 (9th Cir. 1985); Cox v. Commissioner, ¶ 85,464 T.C.M. (P-H) (1985); Appeal of Jared C. Davis, Cal. St. Bd. of Equal., May 8, 1985; Appeal of John R. Sherriff, Cal. St. Bd. of Equal., Dec. 13, 1983.) Appellants have presented no evidence to show that their charters were organized or operated any differently from those described in the cases just cited or that their charters qualified as charitable organizations. Therefore, we must conclude that any contribution made to the charters was not deductible.

The appellants bear the burden of showing that the negligence and failure to furnish information penalties are improper. (Appeal of Myron E. and Alice 2. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) They have presented absolutely no evidence or argument refuting the propriety of the penalties. The **Harrells** have **also** failed to present any evidence to show that they were entitled to their claimed IRA deduction. We must conclude, therefore, that the penalties were properly imposed and the IRA deduction properly disallowed.

For the foregoing reasons, the actions of the FTB in these appeals must be sustained.

