

Appeal of Paul H. and Elizabeth M. Kahelin

At issue is the deductibility of travel and living expenses incurred by appellant Paul H. Kahelin while living apart from his family.

Appellant is a fluid systems design engineer who specializes in hydraulic and pneumatic systems. He has maintained a permanent residence in El Cajon since 1956 when he began work for General Dynamics Corporation, **Convair Division**, in San Diego. Sometime prior to 1974 appellant could not find employment in that area so he accepted work in the Los Angeles area, first with Lockheed Aircraft Corporation and then with Rockwell International Corporation. Mr. Kahelin's family remained in El Cajon, and during the week he lived in Long Beach near his job.

In a claim for refund for 1974, appellant claimed business expense deductions for his living expenses while in Long Beach and for the traveling costs of his weekend trips back to El Cajon. Respondent disallowed the deductions, and this appeal followed.

Section 17202, subdivision (a)(2) of the Revenue and Taxation Code allows deductions for ordinary and necessary traveling expenses, including amounts expended for meals and lodging incurred while the taxpayer is "away from home in the pursuit of a trade or business." However, deductions for personal, living, or family expenses are specifically disallowed by section 17282. These sections are substantially the same as sections 162(a)(2) and 262, respectively, of the Internal Revenue Code of 1954. The purpose of the traveling expense deductions is to equalize the burden between the taxpayer whose employment requires business travel and the taxpayer whose employment does not. Therefore, expenditures motivated by the personal conveniences of the taxpayer and not required by the exigencies of business do not qualify for the deduction. (Appeal of Francis L. and Mary J. Stein, Cal. St. Bd. of Equal., Aug. 16, 1977; Appeal of Stuart D. and Kathleen Whetstone, Cal. St. Bd. of Equal., Jan. 7, 1975.) In order to qualify as a deduction, the traveling expenses must be: (1) reasonable and necessary; (2) incurred while the taxpayer is "away from home"; and (3) directly connected with carrying on the trade or business of the taxpayer or his employer. (Commissioner v. Flowers, 326 U.S. 465 [90 L. Ed. 203] (1946)); Appeal of Francis L. and Mary J. Stein, supra; Appeal of Roy Chadwick, Cal. St. Bd. of Equal., Oct. 7, 1974.)

The courts have adopted different approaches in applying these rules to cases where, as here, a taxpayer with an established residence in one locality accepts employment in another, takes quarters near his job while continuing to maintain the

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permanent residence for his family, and attempts to deduct the resulting duplicate living expenses. The different approaches were thoroughly examined in the Appeal of Roy Chadwick, supra, and reconciled to the ultimate **question** of whether, under all the circumstances, it is reasonable to expect the taxpayer to have moved his permanent residence to the vicinity of his employment. (Appeal of Francis L. and Mary J. Stein, supra.) If it were reasonable to expect Mr. Kahelin to have moved to Los Angeles, then his job was not temporary nor were the travel and living expenses required by business necessity. (Appeal of Francis L. and Mary J. Stein, supra.)

Appellant has emphasized the great job instability in the aerospace industry. Specifically, with respect to **Rockwell International**, there was great dependency on annually approved government funding for the U-1 project. While this may indicate some indefiniteness in his employment with Rockwell, it does not follow that the employment was temporary. (Peurifoy v. Commissioner, 358 U.S. 59 [3 L. Ed. 2d 301 (1958)], **affg. per curiam** 254 F.2d 433 (4th Cir. 1957).) In order to be characterized as temporary employment, it must be foreseeable at the inception of the employment that it will terminate after a short period of time. (Commissioner v. Peurifoy, 254 F.2d 453 (4th Cir. 1957), **affd. per curiam** 358 U.S. 59 [3 L. Ed. 2d 30] (1958); Harvey v. Commissioner, 283 F.2d 4.91 (9th Cir. 1960); Edward F. Ulatnick, 56 T.C. 1344 (1971).)

It is recognized that some work is so uncertain and indefinite, even though it is not temporary, that to a particular taxpayer it may be prudent not to move his family to the work location. However, although one may be justified from a personal point of view in maintaining a residence away from his employment location, his travel and maintenance expenses are not ordinary and necessary business expenses within the meaning of Revenue and Taxation Code section 17202, subdivision (a)(2). (Commissioner v. Flowers, supra; Commissioner v. Peurifoy, supra.)

There is nothing to indicate that appellant was hired by Rockwell on a temporary basis. When he accepted employment with Rockwell there was no established cutoff date for the government funding for the awarded B-1 contract, meaning that the employees working under the contract would continue for the foreseeable future. In fact, Mr. Kahelin's employment with Rockwell was his sole source of income not only for the taxable year in question but also for the prior year and for three years thereafter. In addition, his prior employment was also in the

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Los Angeles metropolitan area. Under these circumstances we conclude it was reasonable to expect Mr. Kahelin to have moved his permanent residence to the Los Angeles area at least by the beginning of the taxable year in question. His failure to do so was motivated by personal considerations, thus precluding travel expense deductions.

Appellant has cited several cases ^{1/} in support of his position that his employment was temporary. However, the decision in each of these cases is currently on appeal and, further, each is readily distinguishable from the case at hand.

On the basis of the record before us, respondent's action in this matter must be sustained.

i/ James Marion Waldrop, ¶ 77,190, P-H Memo. T.C. (1977);
Dennis M. Babeaux, ¶ 77,154, P-H Memo. T.C. (1977); and
Ira L. Patrick, ¶ 77,153, P-H Memo. T.C. (1977).

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Q 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 Paul H. and Elizabeth M. Kahelin for refund of personal income tax in the amount of \$151.75 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of August, 1979, by the State Board of Equalization.

William L. Brown Chairman
James H. Anderson Member
Robert J. ... Member
Scott Kelly Member
_____, Member