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OPINION	:	No. 79-409
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of	:	August 30, 1979
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SUBJECT: LEGISLATORS' TRAVELING EXPENSES—Legislators who have abandoned their family residences in their districts and moved to Sacramento are not entitled to traveling expenses for living expenses in Sacramento.

The Honorable Martin Huff, Executive Officer, Franchise Tax Board, has requested an opinion on the following question:

If a legislator has sold or abandoned his family residence in his district and moved to Sacramento, will he be entitled to a traveling expense deduction under amended Revenue and Taxation Code section 17202 for those living expenses incurred while the Legislature is not in session?

CONCLUSION

If a legislator has sold or abandoned his family residence in his district and moved to Sacramento, he would not be entitled to a traveling expense deduction under amended Revenue and Taxation Code section 17202 for living expenses in Sacramento.

ANALYSIS

We are advised that a few legislators have disposed of their homes in their districts and have moved to Sacramento. These legislators maintain their legal residences within the districts they represent for purposes of voting and qualifying for membership in the Legislature (see Art. IV, section 2, of the California Constitution) but live in Sacramento.

Revenue and Taxation Code section 17202¹ relating to the state income tax provides in part:

“(a) There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including— . . .

“(2) Traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; . . .

“(b) . . . For purposes of subdivision (a), the place of residence of a Member of the Legislature for purposes of this part shall be deemed to be within the district which he represents.”

Your question is whether the above-quoted provision in section 17202(b) is applicable to those few legislators who have disposed of their homes in their districts and moved to Sacramento. The answer must be found by ascertaining the intention of the Legislature when it enacted this provision.

Some review of the business expense deduction for income tax purposes is necessary to an understanding of the legislative purpose behind the 1977 amendment to section 17202(b). Both the state and federal income tax law (see 26 U.S.C. § 162 (a) (2)) allow a deduction for “traveling expenses while away from home in the pursuit of a trade or business.” The Internal Revenue Service and the federal courts have interpreted the word “home” in this statute to mean the place where the taxpayer’s principal place of business is located, regardless of where he dwells. (See *Commissioner v. Stidger* (1967) 386 U.S. 287; *Wills v. C.I.R.* (9th Cir. 1969) 411 F.2d 905.) This interpretation was applied to a legislator in a 1975 federal court decision which held that a legislator could not deduct his traveling expenses while away from his district at the Legislature in the state capitol since the legislator’s principal

¹ All section references are to the Revenue and Taxation Code unless otherwise indicated.

place of business was at the Legislature in the state capitol. (*George Montgomery* (1975) 64 T.C. 175, affd. *Montgomery v. C.I.R.* (6th Cir. 1976) 532 F.2d 1088.)

This is the background which prompted the enactment of the provision in question by Chapter 1079, Statutes of 1977. That chapter added the language to section 17202 that for purposes of the travel expense deduction for state income taxes “the place of residence of a Member of the Legislature . . . shall be deemed to be within the district which he represents.”

The manifest purpose of this enactment was to change the rule of the *Montgomery* case to allow legislators to deduct their travel expenses while away from home at the Legislature on legislative business. For most of the legislators who in fact maintain their homes in their respective districts, it is accurate to describe their expenses while in Sacramento as “travel expenses while away from home in the pursuit of a trade or business,” but the same cannot be said for those few legislators who dispose of their homes in their districts and move to Sacramento.

The question thus becomes whether the Legislature, when it enacted the income tax residence rule for legislators in 1977, intended to make a legislator’s home for income tax purposes in the district represented in all cases regardless of where the legislator actually lives or whether it intended the rule to apply only in the usual case where the legislator in fact lives in the district he represents.

To include those few legislators who have disposed of their homes in their districts and moved to Sacramento within the 1977 rule leads to some unjust and absurd results. It would mean that for those few legislators who have moved to Sacramento from distant districts, a travel expense deduction on their state income tax may be taken for a number of normal living expenses not deductible by others. These would include the cost of commuting to the Legislature, the cost of the legislator’s meals and the cost of his lodging; i.e., the rent or payments on his Sacramento dwelling since in the eyes of the law his home would be in his district and these expenses are incurred while away from that home.

On the other hand, when he travels to his district on legislative business, he will not be able to take a travel expense deduction because he will not be away from home. The absurdity is highlighted when we contrast the state income tax consequences to the legislator who represents and lives within Sacramento to those of a legislator representing a distant district who rents the house next door and moves in on a year round basis. The legislator from the distant district could deduct the above-mentioned living expenses while the Sacramento legislator, with identical expenses could not, if section 17202(b) is to be interpreted literally.

It is well settled that statutes must be given a reasonable interpretation, and that a

literal construction which will lead to absurd results should not be given if it can be avoided. (*Dempsey v. Market Street Ry. Co.* (1943) 23 Cal. 2d 110, 113.) “All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice or oppression or an absurd consequence. It will always be presumed that the legislature intended exceptions to its language which would avoid results of this character.” *Ex parte Lorenzen* (1900) 128 Cal. 431, 439–440; *Cotton v. Superior Court* (1961) 56 Cal. 2d 459, 469.

We conclude that the Legislature did not intend that its 1977 amendment to section 17202(b) was to apply to those few legislators who have sold or abandoned their homes in their districts and moved to Sacramento.
