



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DAN MOROTTI)

Appearances:

For Appellant: Will F. Enders, Public Accountant

For Respondent: Hebard P. Smith, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Dan Morotti to a proposed assessment of additional personal income tax in the amount of \$46.89 for the year 1945.

During the year 1945 and for some years prior thereto the Appellant and his wife operated a hotel and an on-sale liquor business in the city of Stockton. The books of account for the liquor business were kept by Appellant's wife and consisted of a daily statement of cash receipts and disbursements shown by the cash register tape, In 1945 the Sales Tax Division of this Board audited the on-sale liquor business, for sales tax purposes, and estimated, on the basis of purchases, that Appellant had failed to report gross receipts from sales in the amount of \$20,626.47 for the period January 1, 1943, to June 30, 1945. The resulting sales tax deficiency was paid in full without protest and Appellant has not sought a refund of any portion of that tax.

For the year 1945 Appellant and his wife filed separate personal income tax returns on which each reported as income one-half of \$7,508.06, the estimated unreported gross receipts from sales attributed to the first six months of 1945, and claimed a deduction in the same amount for a loss arising from embezzlement, They allege that their books of account accurately reflect all of the monies actually received from the operation of the liquor business; that they did not receive the estimated gross receipts from unreported sales; and that, accordingly, either merchandise or cash was embezzled in the aggregate amount claimed as a loss. The only additional evidence in the record to bolster the Appellant's supposition of theft or embezzlement is his further statement that shortly after the sales tax audit he apprehended a bartender in the act of pilfering \$40.00 from cash boxes. He did not, at any time, report thefts of money or merchandise to the police.

