

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

OPINION

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 grossreceipts 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.

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An examination of the Appellant's financial affairs by the Franchise Tax Board revealed that his bank-deposits for the first four'months of the year 1945 totaled \$21,500. The recorded receipts for that period were only \$14,243.60, leaving an unexplained difference of \$7,256.50, the approximate amount claimed to have been embezzled. In addition to such unexplained bank deposits it appears that during the period from 1943 to 1945 inclusive, Appellant paid a \$20,000 mortgage indebtedness on'the hotel, although his reported net income during that period was not sufficient to have discharged such an obligation after payment of Federal income taxes and reasonable living expenses. At the hearing before this Board Mrs, Morotti testified that neither she nor her husband could explain the source of bank deposits in excess of recorded receipts particularly one of \$8,000 made, during April of 1945. The Appellant was not present at the hearing.

It is well established that the findings of the Franchise Tax Board in proposing an assessment of additional tax are prima facie correct and that the burden of proof to show error in the disallowance of a claimed deduction rests upon the Appellant. Estate of Briden, 11 T.C. 1095; Avery v. Commissioner, 22 Fed. 2d 6; Willits v. Commissioner, 36 B.T.A. 294; Hoefle v. Commissioner, 114 Fed. 2d 713. The Appellant having failed to establish the asserted theft or embezzlement and being unable or unwilling to account for the bank deposits and expenditures above mentioned, the action of the Franchise Tax Board must be sustained.

ORDER

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 18595 of the Revenue and Taxation Code, that 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 be and the same is sustained.

Done at Sacramento, California, this 29th day of May, 1952,

; Chairman Wm. G. Bonelli, Member J. H. Quinn, Member Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary