



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HOWARD N. AND THELMA GILMORE)

Appearances:

For Appellants: Nathan J. Friedman, Certified Public Accountant

For Respondent: James T. Philbin, Assistant Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Howard N. and Thelma Gilmore to proposed assessments of additional personal income tax in the amounts of \$117.61, \$207.15, \$157.78 and \$179.56 for the years 1952, 1953, 1954 and 1955, respectively.

This is a companion appeal to the Appeal of National Envelope Corporation, this day decided. Respondent disallowed certain deductions claimed by National Envelope Corporation as being expenditures for the personal benefit of its president, Appellant Howard N. Gilmore, and included them as dividend income to Appellants, who had filed joint returns. In our decision in the Appeal of National Envelope Corporation, we sustained Respondent's action in disallowing \$1,000 of travel and entertainment expenses claimed by the corporation for each year, but we modified Respondent's action in disallowing all the depreciation claimed on a second automobile placed at the disposal of Howard N. Gilmore by deciding that fifty percent of its use was attributable to the corporation's business.

The sole question presented is whether the amounts of the, claimed deductions disallowed to the corporation are taxable to Appellants.

The travel and entertainment expenses that were disallowed were for the 'personal benefit of Howard Gilmore and the portion of the automobile depreciation that was disallowed reflected his personal use of the car. Accordingly, it seems clear that these amounts constituted income upon which the Appellants are subject to tax. (Rev. & Tax. Code, 9170'71 (formerly 17101); Max P. Lash, T. C. Memo., Dkt. No. 48408, April 16, 1956, aff'd on this point, 245 F. 2d 20; American Properties, Inc., 28 T. C. 1100, aff'd 262 F. 2d 150.)

Appeal of Howard N. and Thelma Gilmore

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of Howard N. and Thelma Gilmore to proposed assessments of additional personal income tax in the amounts of \$117.61, \$207.15, \$157.78 and \$179.56 for the years 1952, 1953, 1954 and 1955, respectively, be and the same is hereby modified to include only fifty percent of the amount of depreciation on the second automobile placed at Appellant Howard N. Gilmore's disposal by National Envelope Corporation as taxable income to Appellants. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 7th day of November, 1961, by the State Board of Equalization.

John W. Lynch , Chairman
Geo. R. Reilly , Member
Richard Nevins , Member
_____, Member
_____, Member

ATTEST: Dixwell L. Pierce , Secretary