

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
JOSEPH O. STITES }

For Appellant: Joseph O. Stites, in pro. per.

For Respondent: Burl D. Lack, Chief Counsel;
 Crawford H. Thomas, Associate Tax 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 Joseph O. Stites to proposed assessments of additional personal income tax in the amounts of \$7.01 and \$14.49 for the years 1955 and 1956, respectively.

Appellant filed personal income tax returns for the years 1955 and 1956. During these years Appellant was engaged solely in the management of his personal investments. His gross income during the years in question consisted solely of dividends and capital gains from the sale of corporate stock.

In 1955 Appellant received \$20,888 as the gross sales price of stock which he sold; in 1956 he received \$59,926. Appellant had expenses composed of interest on margin accounts, amounts paid for market information and miscellaneous other expenses, in the amounts of \$1,085 in 1955 and \$1,632 in 1956.

Appellant deducted the expenses from his gross income to compute adjusted gross income. Appellant then took the standard deduction in arriving at his taxable income. Respondent disallowed the deduction of the expenses as a means of computing adjusted gross income but allowed the expenses to be deducted from adjusted gross income in order to compute taxable income. The standard deduction was then disallowed.

Respondent's contentions are as follows: The standard deduction may be taken in addition to the deduction of the expenses in question only if the expenses are deductible in arriving at adjusted gross income and not if they are deductible from adjusted gross income to arrive at taxable income. (See Rev. & Tax. Code §§ 17073 and 17171(b).) These expenses were of a type which could have been deducted in arriving at adjusted gross income only if Appellant's activity constituted a trade or business. (See Rev. & Tax. Code § 17072(a).) The management of Appellant's investments did not constitute a trade or business.