

BEFORE THE STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of) ROBERT В.

> For Appellant: Robert E. Tarbox and

Tarbox & Jue Attorneys at Law

For Hespondent : Wilbur F. Lavelle Associate Tax Counsel

O PINION

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board -on the protest of Robert B. Koehl against a proposed assessment of additional personal income tax in the amount of \$30.16 for the year 1961.

Robert B. Koehl (hereafter "appellant") filed his state and federal income tax returns for the year 1961 and therein claimed a casualty loss deduction of \$1,780. According to appellant, the claimed loss is the difference between the fair market value of his automobile immediately. prior to an accident occurring on October 21, 1960, and the salvage price for which the automobile was sold shortly after the accident. Appellant states that his loss was not compensated for by insurance.

The Internal Revenue Service disallowed the casualty loss deduction on the ground that if a loss was incurred, it was sustained in 1960 rather than 1961. Appellant then filed an amended federal tax return for 1960 and claimed the deduction in that year. The Internal Revenue Service, in turn, disallowed appellant's 1960 claim for refund for the following reasons: (1) the loss occurred because of a willful act of negligence, (2) the loss was due primarily to the quickness of sale rather than the accident, and (3) there was no verification af the satural appearance of last resulting after the accident. of the actual amount of loss resulting from the accident.

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Respondent's proposed assessment against appellant is based entirely upon the federal disallowance of the casualty loss claimed for the year 1961.

Section 17206 of the Xevenue and Taxation Code allows "as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise" including "Losses of property not connected with a trade or business, if such losses arise from fire storm shipwreck, or other casualty" However, deduction: are a matter of legislative grace and the burden of proof is upon the taxpayer to show that the deduction is within the terms of the statute. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348].)

No evidence has been offered in support of appellant's claim, In the absence of any evidence on this point, appellant has failed to meet his burden of proof and respondent's action must be sustained.

Pursuant to the view expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ARREST, 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 Robert B. Koehl against a proposed assessment of additional personal income tax in the amount of \$30.16 for the year 1961, be and the same is hereby sustained.

Done at Sacramento , California, this 15th day of December , 1966 , by the State Board of Equalization.

Chairman

Member

Member

Member

, Member

ATTEST:

Secretary