



69-SBE-012

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In **the** Matter of the Appeal of }
WILLIAM B. AND SALLY SPIVAK }

For Appellants: Edward S. **Maltun**
Certified Public Accountant

For Respondent: Crawford H. Thomas
Chief Counsel

Peter S. Pierson
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 protest of William B. and Sally Spivak against proposed assessments of additional personal income tax in the amounts of \$67.05, \$87.08, **\$1,613.63** and **\$81.64** for the years 1957, 1958, **1959** and **1960**, respectively.

An Internal Revenue Service agent audited the federal tax returns of appellants William B. and Sally Spivak for the years in question. As a result dividend income was increased and there was partial disallowance of the deduction of entertainment and travel expenses, a casualty loss, and certain contributions. Respondent Franchise Tax Board issued notices of proposed assessment which followed the federal changes. At a protest hearing held by respondent, appellants indicated that the Appellate Division of the Internal Revenue Service had subsequently allowed many of the originally disallowed deductions. The Franchise Tax Board asked appellants to submit a copy of the Appellate Division settlement. However it was not submitted, and consequently respondent affirmed **its** deficiency assessments. Whether the Franchise Tax Board's action was proper is the sole issue of this case.

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Respondent's determination of deficiencies based upon a federal audit report is presumed to be correct and the burden is on the taxpayers to show that it is erroneous. (Appeals of Jesse W. and Louella M. Frakes, Cal. St. Bd. of Equal.; June 6, 1968; Appeal of Horace H. and Mildred E. Hubbard, Cal. St. Bd. of Equal.; Dec. 13, 1961; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959. See also Appeal of Frank and Laura J. Randall, Cal. St. Bd. of Equal., Dec. 11, 1963.) Appellants have not submitted a copy of the federal Appellate Division settlement. They have submitted schedules showing the disparities between their claimed deductions and those allowed by the Franchise Tax Board, but they have not submitted any documentation substantiating their claimed deductions.

Appellants contend that the so-called "Cohan rule" applies to the entertainment expenses at issue. However the appellants have not offered any evidence, other than their own general statements, of the occurrence and character of such expenditures. Consequently there is no foundation upon which to approximate the claimed entertainment expenses consistent with the doctrine set forth in Cohan v. Commissioner, 39 F.2d 540. (Chesbro v. Commissioner, 225 F.2d 674.)

-We conclude that appellants have not carried their burden of showing that respondent's **determination of deficiencies** based upon a federal audit report was erroneous. Therefore, respondent's determination must be upheld.

O 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 protest of

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William B, and Sally Spivak against proposed assessments of additional personal income tax in the amounts of **\$67.05**, **\$87.08**, **\$1,613.63** and **\$81.64** for the years 1957, 1958, 1959 and 1960, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of February, 1969, by the State Board of Equalization.

John W. Lynch, Chairman
Paul R. Leake, Member
Paul K. Mori, Member
_____, Member
_____, Member

Attest: [Signature], Secretary