



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MYRON E. AND ALICE Z. GIRE)

Appearances:

For Appellants: Myron E. Gire, in pro. per.
For Respondent: Robert S. Shelburne
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 Myron E. and Alice Z. Gire against proposed assessments of additional personal income tax and penalties in the total amounts of \$482.90, \$410.28 and \$446.64 for the years 1961, 1962 and 1963, respectively.

After audit of appellants' 1961, 1962 and 1963 returns, the Franchise Tax Board disallowed rental business net losses and various itemized deductions claimed by appellants on each return, and disallowed capital losses claimed on both the 1961 and 1962 returns. The basis of these disallowances was that appellants had failed to substantiate the deductions. In respect to each return the Franchise Tax Board added rental income which had been reported on appellants' federal returns but was omitted from the state returns. Also, a mathematical error on the 1963 return was corrected.

Since appellants' 1961 return had not been received by the Franchise Tax Board until August 26, 1964, a 25 percent late filing penalty was assessed under section 18681 of the Revenue and Taxation Code. With respect to each return the Franchise Tax Board also assessed a 25 percent penalty for failure to furnish

information requested and a 5 percent penalty for negligence, under sections 18683 and 18684, respectively, of the Revenue and Taxation Code.

At the conclusion of the hearing of this matter we ordered that appellants be given 60 days in which to organize their records and then submit them for Franchise Tax Board consideration. We stated that if this procedure did not resolve the case we would then determine the appeal. During this 60-day period appellants were successful in substantiating some of their claimed deductions and rental income amounts and consequently the Franchise Tax Board reduced the assessments for the years 1961, 1962 and 1963 to \$109.54, \$21.06 and 96131.78, respectively. The sole issue of this appeal is whether these assessments, as reduced, are correct.

A determination by the Franchise Tax Board is presumptively correct, and the burden is on the taxpayer to prove that it is erroneous. (Appeals of The Diners' Club, Inc., Cal. St. Bd. of Equal., Sept. 1, 1967.) This rule also applies to the penalty determinations involved in the instant case. (Bo Boynton-Dedrick, 228 F.2d 745, cert. denied 351 U.S. 938 [100 L. Ed. 1465] Cal. Admin. Code, tit. 18, §5036; see Genevra He&n, 32 T.C. 479, aff'd, 283 F.2d 227.) Moreover, the taxpayer has the burden of establishing the occurrence and amount of a deductible loss or expense. (Burnet v. Houston, 283 U.S. 223 [75 L. Ed. 991]; Appeal of George E. Gordon, Jr., Cal. St. Bd. of Equal., Nov. 19, 1968.)

With respect to the amounts remaining at issue, appellants have not presented any significant evidence in support of the claimed deductions, in explanation of the omissions of rental income, or in refutation of the penalties. Therefore we must conclude that appellants have failed to carry their burden and the Franchise Tax Board's determinations 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,

Appeal of Myron E. and Alice Z. Gire

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 Myron E. and Alice Z. Gire against proposed assessments of additional personal income tax and penalties in the total amounts of \$482.90, \$410.28 and \$446.64 for the years 1961, 1962 and 1963, respectively, be and the same is hereby modified in accordance with respondent's concessions. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 10th day of September, 1969, by the State Board of Equalization.

John W. Lynch, Chairman
Paul R. [unclear], Member
[unclear], Member
[unclear], Member
[unclear], Member

ATTEST: [unclear], Secretary