



Appeal of Hugh S. and Barbara L. Jenings

with their contention that no gain had been realized through any transaction involving 2,000 shares of Allied T.V. stock on December 11, 1961. The resulting change in appellants' 1961 federal income tax liability was followed by a corresponding revision of their 1961 California income tax liability.

The specific adjustments to 1962 taxable income which are the subject of this appeal involve the following items: (a) \$2,844.29 in gain from the sale of capital assets, including 705 shares of Allied Empire stock; (b) \$3,458.54 in disallowed interest expense; (c) \$375 in disallowed tax expense; and (d) \$1,196.05 in other disallowed itemized deductions.

A deficiency assessment issued by respondent on the basis of a federal audit report is presumed to be correct and the burden is on the taxpayer to show that it is erroneous. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414]; Appeal of Charles K. Holden, Cal. St. Bd. of Equal., Jan. 6, 1970; Appeal of Merlin L. Hartdenen, Cal. St. Bd. of Equal., Sept. 12, 1968; and Appeal of Jesse W. and Louella M. Frakes, Cal. St. Bd. of Equal., June 6, 1968.) At the hearing of this matter, appellant Hugh S. Jenings agreed that some shares of Allied Empire stock were exchanged in 1962, but he expressed doubt about the number of shares involved and the amount received for them. Information obtained from the Internal Revenue Service and the stock transfer agent indicate that shares of Allied Empire stock were exchanged in 1962. The only evidence in our record concerning the value received from the subject exchange is that reflected in the Internal Revenue Service audit. In addition, the appellants have not submitted any evidence in support of their contentions relative to the other adjustments to 1962 taxable income. Under these circumstances, we have no choice but to sustain respondent's action in this matter.

We are sympathetic towards appellants' personal misfortune which may have resulted from the difficulty encountered by the Internal Revenue Service in analyzing the various stock transactions. The adjustments recently made by the federal agency and by the respondent in revising the 1961 income tax liabilities have resolved the major problems complained of by appellants in their favor. Our sympathy, however, cannot justify a determination in appellants' favor for the 1962 year, which is the only year at issue before this board.

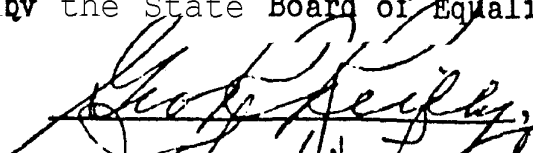
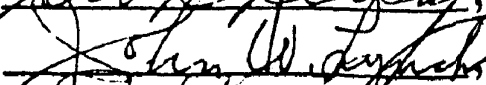
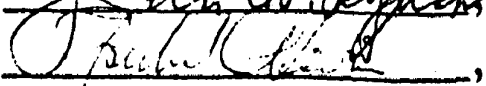
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O R D E R

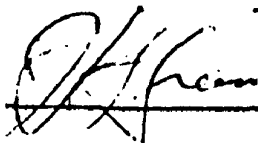
Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section **19060** of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Hugh S. and Barbara L. Jenings for refund of personal income tax and interest in the total amount of **\$238** for the year **1962** be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of April, 1970, by the State Board of Equalization.

George J. Feible, Chairman  
John W. Lynch, Member  
Robert C. Clark, Member  
\_\_\_\_\_, Member  
\_\_\_\_\_, Member

ATTEST:

J. H. Kern

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Secretary