

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CLARE E. ROWLES)

For Appellant: Clare E. Rowles,
in pro. per.

For Respondent: Kathleen M. Morris
Counsel

OPINION

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Clare E. Rowles against proposed assessments of additional personal income tax in the amounts of \$365.18 and \$322.65 for the years 1974 and 1975, respectively.

Appeal of Clare E. Rowles

The sole issue presented is whether appellant has established error in respondent's allowance of only one-half of the amount claimed as a deduction for trust management expenses.

Appellant is the grantor and trustee of eight separate trusts. She is also the beneficiary of one of these trusts (hereinafter referred to as "appellant's trust" or "her trust"). Appellant's trust, she contends, contains all of her income-producing assets, which are apparently rental properties. Her daughter, grandchildren and several friends are beneficiaries of the other seven trusts which allegedly are funded only with securities. Appellant manages all eight trusts with no compensation.

Fiduciary returns were not filed for the trusts, so administration expenses were not charged against their principal or income. Appellant therefore deducted these expenses, totaling \$5,440 and \$5,871, on her individual personal income tax returns for 1974 and 1975, respectively.

Respondent determined that appellant was entitled to deduct the management expenses for only her own trust. However, appellant declined to segregate the expenses of her trust from those of the various other trusts, contending that all expenses should be attributable to her own trust due to its large size. Since appellant failed to provide adequate information and refused to allow respondent's auditor to examine her books and records without a subpoena, respondent initially allowed one-fifth of the claimed expenses for each year, on its assumption, at that time, that only five trusts were involved. Notices of proposed assessments for 1974 and 1975 were issued on that basis.

In the course of appellant's protest of these proposed assessments, respondent discovered the existence of the other three trusts. Appellant presented some evidence at that time showing that the management effort and expense were greater for her trust than for any of the others. Respondent accordingly determined that, in the absence of any other substantiation for the deductible amount, 50 percent of the claimed expenses would be a reasonable deduction, and it issued Notices of Action for the years in question reflecting these adjustments. Appellant then filed this timely appeal.

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Respondent contends that appellant may not deduct management expenses for trusts from which she receives no income. Appellant does not disagree, but states that all of the expenses were attributable to her own trust. Respondent counters that since she managed all eight trusts, some expense must be attributable to the other trusts.

It is well settled that appellant bears the burden of proving that respondent's determination is incorrect (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Janice Rule, Cal. St. Bd. of Equal., Oct. 6, 1976), and mere unsupported statements are insufficient to sustain that burden. (Appeal of Clyde L. and Josephine Chadwick, Cal. St. Bd. of Equal., Feb. 15, 1972.)

Appellant has presented no evidence other than her unsupported statements as to the assets and management of the various trusts. She has failed to provide adequate information substantiating her claim that no expenses were attributable to the trusts other than her own, and also has refused to allow an inspection of her books and records. When, as here, the taxpayer has the needed information or has access to the necessary evidence but refuses to produce it, she is not in a position to complain of an adverse decision. (Appeal of Henrietta Swimmer, etc., Cal. St. Bd. of Equal., Dec. 10, 1963.)

Respondent, recognizing that some portion of the expenses claimed are deductible, has allowed 50 percent of the deductions claimed for each of the years 1974 and 1975. In light of appellant's failure to produce evidence to substantiate her deductions, we find this to be eminently reasonable.

For the reasons stated herein, we find that appellant has failed to show that respondent's determination was incorrect, and we therefore sustain respondent's action.

10. 11. 2019.

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BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CLARE E. ROWLES)

OPINION ON PETITION FOR REHEARING

On October 28, 1980, we sustained the Franchise Tax Board's assessments of additional personal income tax against Clare E. Rowles in the amounts of \$365.18 and \$322.65 for the years 1974 and 1975, respectively. Our decision at that time was predicated on the appellant's failure to show that the Franchise Tax Board's determination was incorrect. Subsequently, however, Mrs. Rowles filed a timely petition for rehearing which contained evidence sufficient to establish some error in respondent's determination. Accordingly, as explained below, our original opinion and order in this case will be modified.

Appellant has established that she is entitled to a deduction for more than 50 percent of the trust management expenses as attributable to her own trust. She continues to argue that all expenses were incurred solely for her own trust. However, although no additional expense may have been incurred in the management of other trusts, the facts presented convince us the expenses claimed were incurred in the course of managing

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all the trusts, which had many investments in common, and therefore, some part of them was attributable to the trusts other than her own. Since she has failed to show what amount is attributable solely to her own trust, but is clearly entitled to more than 50 percent, we find that a more reasonable estimate of the deductible expenses to be 75 percent, and her deduction is allowed to that extent.

ORDER

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 18596 of the Revenue and Taxation Code, that our order of October 28, 1980, in the matter of the Appeal of Clare E. Rowles be modified to allow an expense deduction of 75 percent of the amount claimed by appellant. In all other respects, our order of October 28, 1980, is affirmed.

Done at Sacramento, California, this 6th day of January, 1981, by the State Board of Equalization, with Members Dronenburg, Bennett, Nevins and Reilly present.

Ernest J. Dronenburg, Jr., Chairman

William M. Bennett, Member

Richard Nevins, Member

George R. Reilly, Member

_____, Member