

BEFORE THE STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LINN L. AND HARRIETT E. COLLINS)

For Appellants: Linn L. and Harriett E.

Collins, in pro. per.

For Respondent: Carl G. Knopke

Counsel

<u>OPINION</u>

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 Linn L. and Harriett E. Collins against proposed assessments of additional personal income tax in the amounts of \$258.88 and \$348.84 for the years 1974 and 1975, respectively.

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The sole issue for determination is whether respondent properly disallowed certain expenses and losses claimed by appellants.

Appellants' joint state personal income tax returns for 1974 and 1975 were audited. During the audit, appellants were requested to substantiate the deductions claimed for medical expenses, taxes, interest expense and contributions. The results of respondent's examination were:

Medical Expenses: Appellants were unable to verify any expenses for 1974 due to incomplete records. However, respondent agreed that it would consider the 1975 records applicable to 1974 also. Since respondent could verify only \$1,325 in 1975 medical expenses, respondent disallowed \$551 for both years.

Taxes: Appellants paid taxes on property located at 300 San Gabriel Court, Sierra Madre, California, in the amount, of \$1,180 in both 1974 and a Since appellants did not own this property during the appeal years, respondent denied the deductions. (See, e.g., John Patrick Feeney, ¶ 66,009 P-H Memo. T.C. (1966); Appeal of Robert J. and Margaret A. Wirsing, Cal. St. Bd. of Equal., Aug. 1, 1974) For 1975 respondent also disallowed \$180 of state disability insurance fund (SDI) contributions because, commencing in 1975, SDI contributions were determined to be nondeductible state income taxes. (Appeal of Arnold E. and Mildred H. Galef, Cal. St. Bd. of Equal., April 10, 1979.) Additionally, in 1975 appellants incorrectly computed their 'gasoline and sales tax deductions from the table provided for that purpose. However, respondent did allow an additional unclaimed \$70 sales tax deduction incurred in the purchase of an automobile. These adjustments resulted in reducing the deductions claimed for sales tax and gasoline tax by \$17 and \$58, respectively.

Interest Expense: Appellants were able to verify only \$324 paid in 1974 and \$789 paid during 1975. Accordingly, the remaining amounts claimed as interest expense deductions for those years were disallowed.'

Contributions: Appellants claimed donations in varying amounts to approximately 70 organizations each year. Although respondent requested verification of only a sampling of these donations, appellants refused to provide any. Accordingly, respondent denied all the deductions claimed for charitable contributions.

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Respondent's action may be summarized as follows:

1974	Reported	<u>Disallowed</u>	$\underline{\text{Allowed}}$
Medical Expenses Taxes Interest Expenses Contributions Total	$\begin{array}{c} 1,967 \\ 4,370 \\ 2,463 \\ \hline 1,432 \\ \$10,232 \end{array}$	\$ 551 1,180 2,139 1,432 \$5,302	\$1,416 3,190 324 \$\frac{1}{4,930}\$
<u>1975</u>			
Medical Expenses Taxes Interest Expenses Contributions Total	\$ 1,876 4,920 4,584 1,621 \$13,001	$\begin{array}{c} \$ & 551 \\ 1,435 \\ 3,795 \\ \hline 1,621 \\ \$7,402 \end{array}$	\$1,325 3,485 789 \$ 5,599

Finally, appellants applied a \$2,000 capital loss each year against their other income. Respondent reduced the claimed capital loss in each year to the \$1,000 statutory maximum. (See Rev. & Tax. Code, \$ 18152, subd. (a) and subd. (b).)

Respondent's action resulted in increasing appellants' taxable income by \$6,302 for 1974 and \$8,402 for 1975. It is from this action that appellants appea 1.

It is well settled that deductions are a matter of legislative grace, and the taxpayer bears the burden of establishing his entitlement to the claimed deductions. (See, e.g., New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 13481 (1934)].) In order tocarry that burden, the taxpayer must point to an applicable statute and show by credible evidence that he comes within its terms. Unsubstantiated assertions by the taxpayer are not sufficient to satisfy the burden of proof. (New Colonial Ice Co. v. Helvering, supra; Appeal of Otto L. Schirmer, Cal. St. Bd. of Equal., Nov. 19 1975) In this appeal appellants have offered absolutely no evidence to establish the deductibility of any of the items disallowed by respondent. Accordingly, we must conclude that appellants have failed to carry the burden of proving their entitlement to deductions in any amount greater than that allowed by respondent. Furthermore, respondent's action in denying the deductions claimed for taxes paid on property not owned, SDI

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contributions and excess capital loss was correct for the reasons set forth in the authorities cited above. Accordingly, respondent's action in this matter must be sustained.

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Linn L. and Harriett E. Collins against proposed assessments of additional personal income tax in the amounts of \$258.88 and \$348.84 for the years 1974 and 1975, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 18thday of November, 1980, by the State Board of Equalization, with Members Nevins, Reilly, Dronenburg and Bennett present.

Richard Nevins	, Chairman
Georse R. Reilly	, Member
Ernest J. Dronenburg, Jr.	, Member
William M. Bennett	, Member
	, Member