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 the other trusts, the facts presented convince us the expenses claimed were incurred in the course of managing

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