



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DONALD C. ORLANDO)

For Appellant: Donald C. Orlando,
in pro. per.

For Respondent: Kathleen M. Morris
Counsel

O P I N I O N

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 Donald C. Orlando against a proposed assessment of additional personal income tax in the amount of \$562.50 for the year 1978.

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Appellant claimed a solar energy tax credit in the amount of \$562.50 on his California personal income tax return for 1978. Rather than completing the form required to claim that tax credit, appellant simply attached a copy of the form used to claim his federal energy tax credit to his California return.

Given the significant differences between the eligibility requirements for the federal energy tax credit and the California solar energy tax credit, respondent rejected appellant's use of the federal form and issued him a notice of proposed assessment of additional personal income tax as a result of the disallowance of his claimed tax credit. Upon receipt of his protest to that action, respondent requested that appellant complete the required California form and provide detailed information supporting his claimed solar energy tax credit. Appellant submitted only a partially completed statement to support **the** claimed tax credit and failed to describe sufficiently the solar energy system he had allegedly installed. When appellant failed to respond to another **request** for detailed information, respondent affirmed its disallowance of the claimed solar energy tax credit, thereby resulting in this appeal.

The sole issue presented for determination by this appeal is whether appellant has established error in respondent's proposed assessment of additional personal income tax for the year in issue.

It is well settled that respondent's determination of a deficiency assessment is presumed correct, and the burden of proving that the determination is erroneous is on the taxpayer. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Pearl R. Blattenberger, Cal. St. Bd. of Equal., March 27, 1952.) This presumption is a rebuttable one and will support a finding only in the absence of sufficient evidence to the contrary. (Wiget v. Becker, 84 F.2d 706 (8th Cir. 1936); Appeal of Janice Rule, Cal. St. Bd. of Equal., Oct. 6, 1976.) Respondent's determination cannot, however, be successfully rebutted when the taxpayer fails to present uncontradicted, credible, competent, and relevant evidence as to the issues in dispute. (Cf. Banks v. Commissioner, 322 F.2d 530 (8th Cir. 1963); Estate of Albert Rand, 28 T.C. 1002 (1957).) To overcome the presumed correctness of respondent's determination, a taxpayer must introduce credible evidence to support his position. When the taxpayer

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fails to support his position with such evidence, respondent's determination must be upheld. (W. M. Buchanan, 20 B.T.A. 210 (1930): Appeal of James C. and Monablanche A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975: Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977.)

While appellant claims that he qualified for the claimed solar energy tax credit, the record of this appeal is devoid of any evidence supporting that assertion. As noted above, assertions of this nature are not sufficient to overcome the presumption of correctness arising from respondent's determination.

For the reasons stated herein, we find that appellant has failed to show that respondent's determination was erroneous. That action will, therefore, be sustained.

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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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Donald C. Orlando against a proposed assessment of additional personal income tax in the amount of \$562.50 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of November, 1981, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Reilly, Mr. Bennett and Mr. Nevins present.

Ernest J. Dronenburg, Jr., Chairman

George R. Reilly, Member

William M. Bennett, Member

Richard Nevins, Member

_____, Member