

Appeal of Ambrose L. and Alice M. Gordos

The sole issue for determination is whether appellants have established any error in respondent's adjustments to the deductions appellants claimed for various expenses during the appeal years.

On their California personal income tax returns for the appeal years, appellants reported that Mr. Gordos was a machinist **leadman** and Mrs. Gordos was a housewife. They also reported that they owned and **operated** a retail golf equipment business. Appellants were cash **basis** taxpayers.

As the result of an audit of appellants' returns for the appeal years, respondent disallowed a number of claimed deductions. The deductions disallowed were either unsubstantiated, claimed more than once, or reflected expenditures which were not deductible. The resulting increases to income were \$3,037, \$1,820, \$1,238 and \$1,741 for the years 1974, 1975, 1976 and 1977, respectively. Appellants' protest was denied and this appeal followed.

During the course of these proceedings, respondent has conceded that appellants should have been allowed an additional deduction in the amount of \$102 for the depreciation of a putter patent for the year 1977.

Although appellants have made no effort to substantiate any of the deductions disallowed, they maintain that the deductions are allowable. With respect to the lack of substantiation, appellants contend that it is not their fault that respondent waited until 1979 to audit their returns, and maintain that they were unaware that they needed to retain their tax records for three to five years. Finally, appellants contest the accrual of interest on respondent's assessments.

Respondent determined that appellants were not entitled to **certain** deductions, primarily because they failed to substantiate the amounts or purposes of the deductions. Such determination is presumptively correct, and in order for appellants to prevail, they must demonstrate that such determination is erroneous. (See, e.g., Appeal of James Lucas, Jr., Cal. St. Bd. of Equal., April 8, 1980.) Though appellants have alleged generally that they are entitled to these deductions, they chose to present no evidence to support their position during this appeal. Accordingly, respondent's action in **dis-**allowing the deductions in issue, as modified by its concession, must be sustained.

Appeal of, **Ambrose L.** and Alice M. Gordos

With respect to the interest on the deficiency, section 18688 of the Revenue and Taxation Code provides that interest on a deficiency shall be assessed and paid at the prescribed rate from the date prescribed for the payment of the tax until the date the tax is paid. The interest is not a penalty imposed on the taxpayer; it is merely compensation for the use of money. (Appeal of Audrey-C, Jaegle, Cal. St. Bd. of Equal., June 22, 1976.) The language of section 18688 is clear and mandatory, and this board is not empowered to waive statutory interest accruing on an unpaid deficiency assessment. < (See Appeal of Audrey C. Jaegle, supra; Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal., Aug. 1, 1974.)

For the reasons stated above, respondent's action in this matter, as modified by its concession, must be sustained.

Appeal of Ambrose L. and Alice M. Gordos

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 Ambrose L. and Alice M. Gordos against proposed assessments of additional personal income tax: in the amounts of \$76.86, \$68.68, \$49.52 and \$77.90 for the years 1974, 1975, 1976 and 1977, respectively, be and the same is hereby modified in accordance with this opinion. In **all other respects, the** action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this **31st** day of **March**, **1982**, by the State Board of Equalization, with Board **Members** Mr. Reilly, **Mr. Dronenburg** and **Mr. Nevins** present.

_____, Chairman
George R. Reilly, Member
-Ernest J. Dronenburg, Jr., Member
Richard Nevins, Member
_____, Member