

Appeal of Royce E. Gum

The issue is whether appellant is entitled to employee business expense deductions for 1976 and 1977 in an amount greater than allowed by respondent.

The Internal Revenue Service audited appellant's 1976 and 1977 federal income tax returns, and increased his taxable income by \$2,114 and \$2,021, respectively. Respondent received a copy of each of the audit reports and determined that the adjustments were applicable to appellant's California tax returns. It issued a proposed assessment for each year reflecting this determination. Subsequent to a hearing, respondent allowed an additional employee business expense deduction in the amount of \$586 for 1976. Nevertheless, appellant protested the proposed assessments for both years. Respondent's denial of these protests led to these appeals, which were consolidated upon agreement of the parties.

The legal principles involved in these appeals are well settled as they have been the subject of numerous previous appeals before this board. Respondent's deficiency assessment based upon a federal audit report is presumed to be correct. (Appeal of Herman D. and Russell Mae Jones, Cal. St. Bd. of Equal., April 10, 1979.) The taxpayer **must** either concede that the federal audit report is correct or bear the burden of proving that it is incorrect. (Rev. & Tax Code, § 18451; Appeal of James M. Denny, Cal. St. Bd. of Equal., May 17, 1962.)

Appellant argues that respondent should **not** base its assessment upon the federal audit reports **because** the audits were not conducted fairly, and because he consented to the reports only because the auditor misinformed him as to the consequences of a failure to consent. These arguments are not relevant to the present inquiry since they do not show that the federal audit reports are incorrect. (Appeal of Ronald J. and Eileen Bachrach, Cal. St. Bd. of Equal., Feb. 6, 1980; Appeal of Carl H. Jr. and Madonna Gross, Cal. St. Bd. of Equal., Aug. 16, 1979.) Appellant also complains that respondent based its proposed assessments **only** on the portions of the federal audit reports which increased appellant's taxable income. Appellant is in error., **Respondent** made all the adjustments made by the federal auditor, and, in fact, increased the deductions allowed for the year 1976.

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Nearly all of the adjustments to appellant's taxable income were made because appellant failed to adequately substantiate expenses claimed as deductions. Appellant claims that he has evidence of these expenses, but has not presented the evidence to this board. We have frequently held that the taxpayer's burden of proof is not met by his unsupported assertions.. (Appeal of Wing Edwin and Faye Lew, Cal. St. Bd. of Equal., **Sept. 17, 1973.**) Since appellant has produced no evidence, he has not met his burden of proving that respondent erred in disallowing these deductions.

Appellant did provide respondent with substantiation of the clothing expenses he claimed as business deductions. The clothing at issue consists of winter business attire and rainwear which were needed for appellant's business trips to England. Although these items are inappropriate for wear in Southern California, where appellant resides, their cost is not deductible since the clothing can be worn outside of appellant's work while he is in England or another location with a similar climate. (A. D. and Nelda M. Crews, ¶ 52,153 P-B Memo. T.C. (1952).)

Appellant complains that respondent failed to provide a hearing concerning his 1977 return, despite the fact that he requested one. Although respondent initially neglected to provide a hearing, it later offered to arrange one. At that time, appellant decided to forgo the Franchise Tax Board hearing and to present his case before this board. Under these circumstances, it is particularly regrettable that appellant has not attempted to provide us with any evidence of his claimed deductions.

On the basis of the foregoing, respondent's action must 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 ORD'ERED, ADJUDGED AND **DECREED**, pursuant to section 18595 of the Revenue and **Taxation** Code, that the action of the Franchise Tax Board **on** the protests of Royce E. Gum against proposed assessments of additional personal income tax in the amounts of \$168.20 and \$174.36 for the years 1976 and 1977, respectively, be and the same are hereby 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