

BEFORE THE STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

In	the	Ма	tter	of	the	Appeal	of)
GLA	DYS	L.	SPUR	GEO	N)

Appearances:

For Appellant: Francis T. Cornish

Attorney at Law

For Respondent: Terry Collins

Counsel

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This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Gladys L. Spurgeon for refund of personal income tax in the amount of \$2,664.75 for the year 1976.

Appeal of Gladys L. Spurgeon

The issue presented is whether appellant has shown any error in respondent's determination.

On her 1976 California personal income tax return, appellant reported and paid tax on the capital gain she realized from the sale of an apartment building she purchased in 1959. Upon audit, 'respondent determined that appellant had incorrectly determined her adjusted basis in the building and, as a result, had under-reported her gain by \$3,860. Respondent also determined that a portion of the long-term capital gain was an item of tax preference subject to the tax imposed by Revenue and Taxation Code section 17062. Respondent issued a proposed assessment of additional tax reflecting its determination. Appellant paid the tax assessed, then filed a claim for refund. Respondent denied the claim and, after considering This timely appellant's protest, reaffirmed its denial. appeal followed.

Respondent's determinations are presumed correct and the taxpayer has the burden of proving that they are incorrect. (Appeal of K. L. Durh'am, Cal. St. Bd. of Eaual. March 4, 1980.) Rather than attempting to prove respondent's determination to be incorrect, appellant contends that she had no taxable gain since the value of the dollar decreased during the time she owned the apartment building. Similar claims have been considered by this board and-have been found to be without merit. (Appeals of Fred R. Dauberger, et. al., Cal. St. Bd. of Equal., March 31, 1982; Appeal-of M. Leslie and Alice M. Grant, Cal. St. Bd. of Equal., January 9, 1979.) Since appellant has produced no evidence proving that respondent's determination is erroneous,) respondent's action must be sustained.

Appeal of Gladys L. Spurgeon

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 $19060\,\mathrm{of}$ the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Gladys L. Spurgeon for a refund of personal income tax in the amount of \$2,664.75 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of October, 1982, by the State Boar'd of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett	, Chairman
Conway H. Collis	, Member
Ernest I. Dronenburg, Ir.	Member
Richard Nevins	, Member
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