



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GLADYS L. SPURGEON)

Appearances:

For Appellant: Francis T. Cornish
Attorney at Law

For Respondent: Terry Collins
Counsel

O P I N I O N

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 appellant's protest, reaffirmed its denial. This timely 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 Equal., 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.

