

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
EDWARD BENNER)

For Appellant: Edward Benner,
 in pro. per.

For Respondent: Mark **McEvilly**
 Counsel

OPINION

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 Edward Benner against a proposed assessment of additional personal income tax in the amount of **\$110.42** for the year 1971.

Appeal. of. Edward. Benner

The **sole** issue to be determined is whether appellant has shown that respondent's disallowance of his claimed casualty loss deduction for 1971 was erroneous.

In 1977, respondent discovered that appellant had filed a petition with the **United** States Tax Court. It then requested and received from appellant a copy of the federal audit report for 1971 which had led to appellant's appeal to the tax court. The audit report disallowed appellant's claimed casualty loss deduction for that year in the amount of **\$19,840.00**. Respondent followed the federal audit report, **disallowing** the casualty loss deduction on appellant's 1971 state tax return, and issued the subject proposed assessment. Appellant protested, and respondent delayed further action on the proposed assessment pending the final federal determination.

The tax court sustained the disallowance of the **casualty** loss deduction for 1971 in Edward R. Benner, ¶ 77,162 P-H Memo. T.C. (1977). The **Ninth** Circuit Court of **Appeals** later **affirmed** the tax court decision in an unpublished opinion. (Benner v. Commissioner of Internal Revenue, 618 **F.2d** 115 (1980).) Appellant **did not** pursue any further appeal. When the final federal determination had been entered, respondent affirmed its proposed assessment. Appellant then filed this timely appeal.

Section 18451 of the Revenue and Taxation Code provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that respondent's determination based on a federal audit report is **presumptively** correct, and the burden is on the taxpayer to prove that the **determination is** erroneous. (Appeal of Helen G. Gessele, Cal. St. Bd. of Equal., April 8, 1980; Appeal of Casper W. and Svea Smith, Cal. St. Bd. of Equal., April 5, 1976.)

Appellant has presented absolutely no evidence relevant to the casualty loss, which involved geological conditions affecting real property. Instead, he has made vague allegations of personal injury caused by radiation from a radar station. Lacking any evidence which might show that respondent's determination was **incorrect**, we must sustain respondent's action.

Appeal of Edward Benner

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 Edward Benner against a proposed assessment of additional personal income tax in the amount of \$110.42 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California this 1st day of February, 1983, by the State Board of Equalization, with Board Members with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member