



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ALAN AND ELLEN SALKE)

For Appellants: Leslie S. Klinger
Attorney at Law

For Respondent: Michael R. Kelly
Counsel

O P I N I O N

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 Alan and Ellen Salke against a proposed assessment of additional personal income tax and penalty in the total amount of **\$2,203.97** for the year 1976, and a proposed assessment of additional personal income tax in the amount of **\$3,447.44** for the year 1'977.

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The issues presented by this appeal are (1) whether certain payments made by **Almar** Management Ltd. were properly characterized as constructive dividends, and (2) whether appellants are entitled to a deduction for a claimed loss on small business stock.

Appellants were the sole shareholders of **Almar** Management Ltd. (**Almar**). As a result of an audit of the corporation's franchise tax returns for the income years ended September 30, 1976, and 1977, respondent determined that certain expenses deducted as business expenses during both years by the corporation were actually the payment of appellants' personal expenses. Respondent therefore disallowed the deductions claimed by the corporation and determined that appellants had received constructive dividends in the amount of the disallowed deductions.

During 1977, **Almar** merged with International Business Management (International). In exchange for their **Almar** stock, appellants received one-third of the issued and outstanding stock of International. Appellants contend that, as a result of this transaction, they suffered a loss of \$17,405. On their 1977 personal income tax return, they claimed a deduction in that amount as a loss on small business stock pursuant to section 18206 of the Revenue and Taxation Code. Upon audit, respondent determined that appellants were not entitled to the claimed deduction because the merger was a **tax-free** reorganization under section 17432 of the Revenue and Taxation Code and because appellants had failed to establish their basis in the **Almar** stock.

Respondent issued proposed **assessments for 1976** and 1977 reflecting the above determinations. It also imposed a delinquent filing penalty for 1976 since appellants filed their 1976 return on February 15, 1978. Appellants conceded the propriety of the penalty but protested the proposed assessments. Respondent affirmed the proposed assessments, and this timely appeal followed.

It is well established that respondent's determinations are presumed to be correct and that it is the taxpayer's burden to prove any error. (Appeal of Ambrose L. and Alice M. Gordos, Cal. St. Bd. of Equal., March 31, 1982.) With regard to the first question, whether certain payments by **Almar** constituted constructive dividends, appellants contend that some of the payments were loans which have been repaid and that the remainder were proper corporate expenses. They further contend that **Almar** did not have sufficient earnings and profits to pay

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taxable dividends. No evidence has been presented to support these statements, however, and we have frequently held that a taxpayer's unsupported statement is not sufficient to meet his burden of proof. (Appeal of John A. and Julie M. Richardson, Cal. St. Bd. of Equal., Oct. 28, 1980.) Therefore, we must conclude that the **Almar** payments were constructive dividends. Appellants have presented no argument or evidence attempting to show that they are entitled to the claimed loss on **small business** stock. Therefore, we must also conclude that this deduction was properly denied.

For the above reasons, respondent's action must be sustained.

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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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Alan and Ellen Salke against a proposed assessment of additional personal income tax and penalty in the total amount of **\$2,203.97** for the **year 1976**, and a proposed assessment of additional personal income tax in the amount of **\$3,447.44** for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day
of June , 1984, by the State Board of Equalization,
with Board **Members** Mr. Nevins, Mr. Dronenburg, Mr. Collis
and Mr. Bennett present.

Richard Nevins, Chairman

Ernest J. Dronenburg, Jr. , Member

Conway H. Collis _____, Member

William M. Bennett, Member

_____, Member