

BEFORE **THE STATE BOARD** OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JON GRIDER)

For Appellant: Jon Grider,
in pro. per.

For Respondent: Michael R. **Kelley**
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 Jon Grider against a proposed assessment of additional personal income tax in the amount of \$932.40 for the year 1972.

Appeal of Jon Grider

The question presented by this appeal is whether **appellant** has shown respondent's action, based on a federal **audit** report, to be erroneous.

On his 1972 California personal income tax return! appellant claimed a medical deduction of \$14,266 for **amounts** paid to the Hubbard Counseling Center. Respondent received information from the Internal Revenue Service (IRS) showing that it had disallowed the claimed medical deduction after an audit of appellant's federal tax return. On the basis of that audit report, respondent disallowed the deduction and, on October 23, 1974; issued a notice of proposed assessment (**NPA**).

Appellant filed a protest and respondent deferred action on the protest pending completion of the federal action. In February 1982, respondent learned that the federal action disallowing the deduction had apparently become final in May 1980. In July 1982, respondent affirmed its assessment.

On appeal, appellant contends that: (1) the deduction should be allowed as a charitable contribution, (2) the IRS never sent him a notice of deficiency, and (3) the statute of limitations barred respondent's action.

It is well **settled** that respondent's action which **is based** on a federal **audit** report is presumptively correct, and the burden is on the taxpayer to show that it is incorrect. (Appeal of Royce E.-Gum, Cal. St. Bd. of Equal., March **31, 1982.**) Appellant has **presented** no **evidence** in support of his entitlement to either a medical or charitable contribution deduction. Mere unsupported **assertions** are insufficient to show that respondent's action was erroneous. (Appeal of James, C. and Monablanche A. Walshe, Cal. St. Bd. of **Equal., Oct. 20, 1975.**) In any event, the denial of a charitable **contribution** deduction for payments such as those alleged in this appeal has been **upheld** by the United States. Tax Court in Katherine Jean Graham, 83 T.C. No. 30 (Oct.15, 1984).

As to **appellant's** contention that he received, no notice from the IRS, even if that were relevant to **this** action, we would give it little credence since appellant's protest **letter** clearly indicates; that he had **notice** of the federal action. **Appellant's** allegation that respondent's action was time barred is clearly wrong. Appellant's return was filed: on or **about the due**

Appeal of Jon Grider

date of April 15, 1973, and respondent's NPA was issued on October 23, 1974, well within the four-year statute of limitations.* (Rev. & Tax. Code, § 18586.) The fact that a notice of action was not issued within four years is irrelevant. (Appeal of LaRue and Alice Harcourt, Cal. St. Bd. of Equal., Dec. 7, 1982.)

For the reasons stated above, we must sustain respondent's action.

Appeal of Jon Grider

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 Jon Grider against a proposed assessment of additional personal income tax in the amount of **\$932.40** for the year 1972, be and the same is hereby sustained.

Done at, Sacramento, California, this 8th day of **January**, 1985, by the State Board of Equalization, with Board Members **Mr. Dronenburg**, **Mr. Collis**, **Mr. Bennett**, **Mr. Nevins** and **Mr. Harvey** present.

<u>Ernest J. Dronenburg, Jr.</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	, Member
<u>Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member

*For. Kenneth Cory, per Government Code section 7.9