



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES C. AND)
MONABLANCHE A. WALSHE)

For Appellants: Gail **Denson**
Certified Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

Paul J. Petrozzi
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of James C. and Monablanche A. Walshe against a proposed assessment of additional personal income tax in the amount of \$321.21 for the year 1969.

The issue presented is whether respondent properly disallowed a bad debt deduction claimed by appellants for the year 1969.

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Appellants filed a joint California personal income tax return for 1969 claiming a \$5,100 deduction, described as a bad debt loss on "Notes." Thereafter, respondent requested additional data from appellants concerning the deduction. In response, Mr. Walshe (hereafter appellant) stated that the \$5,100 bad debt deduction was claimed through inadvertent error, and that his state return should have indicated a \$6,194 loss incurred by his small business corporation during 1968. In support of this claim appellant submitted a copy of the 1968 federal income tax return for his small business corporation. Respondent disallowed the claimed deduction and issued a notice of proposed assessment on October 26, 1972.^{1/}

Appellant protested the assessment claiming that the small business corporation loss should have been included in his 1968 personal income tax return. Respondent **denied the** protest and correctly informed appellant that the alleged small business corporation loss had **been disallowed** because California does not permit the taxpayer the option of deducting small business corporation losses on personal income tax returns. Therefore, the loss was not deductible on appellants' personal income tax return for 1968, 1969, or any other year.

Thereafter, respondent received a communication from appellants' representative indicating that appellants agreed they were not entitled to deduct the corporate business loss attributable to 1968, but that appellants were entitled to a deduction for a loss incurred during 1969 by a sole proprietorship. In support of this **contention** appellants submitted a schedule showing a net loss of \$5,144 for a business engaged in "Hose Manufacture" for the taxable year 1969.

^{1/} On August 5, 1974, this board received a **communication** from appellants' **representative** asserting that the deficiency **assessment** was barred by the statute of limitations. However, respondent issued its notice of proposed **assessment within** four years after the filing of appellants' 1969 personal income **tax** return. Therefore, any deficiency may be assessed and payment thereof demanded at any time subsequent to finalization of the tax. (Rev. & Tax. Code, **§ 18586**; Cal. Admin. Code, tit. 18, reg. 18581-18601 **(b).**)

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At respondent's suggestion, appellant met with respondent's auditor for the purpose of verifying the claimed business loss. At this meeting appellant produced several more schedules which represented the alleged business loss incurred during 1969. However,, appellant did not present any documentary evidence, such as cancelled checks, account books, receipts, or billings, which might corroborate the alleged loss.

It is well settled that deductions are a matter of legislative grace and that the taxpayer has the burden of proving he is entitled to the deductions claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348]; Appeal of James M. Denny, Cal. St. Bd. of Equal., May 17, 1962.) In the instant case, appellants' **unsubstantiated assertions** constitute the only evidence of the claimed business loss. We have consistently held that the taxpayer's unsupported assertions are not sufficient to satisfy his burden of proof. (See, e.g., Appeal of Wing Edwin and Faye Lew, Cal. St. Bd. of Equal., Sept. 17, 1973; Appeal of Nake M. Kamrany, Cal. St. Bd. of Equal., Feb. 15, 1972.) **Therefore, on** the record before us we must conclude that **appellants** have failed to meet their **burden of** substantiating the claimed deduction.

Accordingly, respondent's denial of appellants' claimed deduction must be sustained.

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,

