



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
OTTOL. SCHIRMER, ET AL.)

Appearances:

For Appellants: Otto L. Schirmer, in pro. per.

For Respondent: James C. Stewart
 Counsel

OPINION

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 Otto L. and Dorothy Schirmer against proposed assessments of additional **personal income** tax in the amounts of \$90.15, **\$79.70**, and \$62.93 for the years **1967**, **1968**, and **1969**, respectively; and on the protest of Otto L. and Ann Catherine Schirmer against a proposed assessment of additional personal income tax in the amount of \$119.76 for the year **1970**.

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The issue presented is whether certain itemized deductions claimed by appellants for the years 1967 through 1970 were properly disallowed by respondent due to lack of substantiation.

Otto L. Schirmer (hereafter appellant) is a traveling salesman. During each of the years 1967 through 1970 appellant received from his employer an annual travel allowance in the amount of \$3,000. This amount was not reported as income on appellant's tax returns. Following an audit of the returns, respondent increased appellant's taxable income for each year by the amount of the travel allowance. Respondent also allowed additional verified travel expense deductions not previously claimed and disallowed certain charitable contribution deductions which appellant could not verify. In accordance with these adjustments respondent issued proposed assessments.

Appellant protested the proposed assessments and notified respondent that an agreement had been reached with the Internal Revenue Service concerning his federal income tax return for 1970. The Internal Revenue Service had allowed appellant an additional travel expense deduction in the amount of \$1,500 to offset its recognition of the travel allowance as taxable income. Pursuant to the federal adjustment, respondent increased the travel expense deductions allowed appellant by \$1,500 over the amount originally claimed for the years 1967, 1968, and 1970. Respondent did not make this adjustment with respect to the year 1969 because appellant verified travel expenses of \$1,957 over the amount originally claimed for that year. Respondent affirmed the proposed assessments as adjusted and this appeal followed.

The above described adjustments allowed appellant travel expense deductions substantially greater than those appellant was able to verify for the years 1967, 1968, and 1970 during the audit of his returns. For the year 1969 respondent has allowed a travel expense deduction equal to the amount appellant was able to verify. Appellant now contends, however, that during the years 1967 through 1970 he incurred travel expenses which have not been accounted for by the adjustments. In support of this contention appellant submitted a list representing specific expenditures for each of the appeal years. The list does not indicate whether the expenses were incurred in addition to those previously verified and allowed by respondent.

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Section 17296 of the Revenue and Taxation Code provides that "[n]o deduction shall be allowed. .. for any traveling or entertainment expenses unless substantiated by adequate records or by sufficient evidence which corroborates the taxpayer's own statement. " Also, 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, appellant's unsupported assertions constitute the only evidence that the listed expenditures represent deductible expenses incurred in addition to those which respondent has allowed. This board has consistently held that the taxpayer's unsubstantiated 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 appellant has failed to meet his burden of substantiating the additional travel expense deductions claimed.

Appellant also contends that respondent improperly disallowed certain charitable contribution deductions for the years 1967 and 1968. However, appellant has not presented any verification of the 'contributions. Respondent's regulations pertaining to the allowance of charitable contribution deductions provide, in part:

Any deduction for a charitable contribution must be substantiated, when required by the Franchise Tax Board, by a statement from the organization to which the contribution was made indicating the name and address of the contributor, the amount of the contribution, and the date of its actual payment, and by such other information as the Franchise Tax Board may deem necessary. (Cal. Admin. Code, tit. 18, reg. 17214, subd. (a).)

Since appellant has made no attempt to substantiate the claimed contributions, we must conclude that respondent properly disallowed the deductions.

Accordingly, respondent's actions on the above matters 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 Otto L. and Dorothy Schirmer against proposed assessments of additional personal income tax in the amounts of \$90.15, \$79.70, and \$62.93 for the years 1967, 1968, and 1969, respectively, and on the protest of Otto L. and Ann Catherine Schirmer against a proposed assessment of additional personal income tax in the amount of \$119.76 for the year 1970, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of November, 1975, by the State Board of Equalization.

John W. Lynch, Chairman
William H. Bunker, Member
Paul J. Keen, Member
George R. Kelly, Member
_____, Member

ATTEST: W. W. Dunlop, Executive Secretary