

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JEAN AND BESSIE PAJUS)

Appearances:

For Appellants: Jean Pajus, in pro. per.

For Respondent: Noel J. Robinson
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Jean and Bessie Pajus for refund of personal income tax in the amounts of \$85.57, \$174.54, and \$161.36 for the years 1966, 1967, and 1968, respectively.

The sole issue for our consideration is whether respondent's assessments of additional tax based on a federal audit were proper.

Appeal of Jean and Bessie Pajus

During the appeal years, appellants, husband and wife, were residents of San Francisco. Until his retirement in 1965, appellant Jean Pajus, Ph. D. , was a professor of economics at the Berkeley campus of the University of California. Thereafter he continued to do research on international economic problems using a portion of appellants' apartment as his office. In addition to that research, Dr. Pajus also managed the couple's **sizeable** stock portfolio out of his apartment. On, each of their state and federal income tax returns for the years in question, appellants claimed one-third of the apartment rent as a business expense deduction relating to Dr. Pajus' research activity. The Internal Revenue Service (IRS) audited the federal returns and disallowed the claimed rent deductions on the ground that Dr Pajus' research was a hobby and not a business, since he **received** no remuneration for his work. Appellants paid the resulting federal income tax **assessments** but filed claims for refund of the amounts so paid.

The basis for appellants' federal claims for **refund** was that their accountant had mistakenly listed the rent deductions on their returns as business expense deductions, when they should have been claimed as expenses incurred in connection with an **income-producing** activity, i. e. , the management of appellants' stock portfolio. In response to appellants' refund claims, the IRS modified its position with respect to the rent deduction and allowed appellants 8 percent of their yearly rent expense. However, upon reexamination the IRS disallowed a portion of certain other claimed deductions previously allowed in full. The net effect of this action was that no federal refund was due.

Respondent originally proposed assessments **based on** the initial IRS audit report. When the IRS modified its position by allowing appellants the 8 percent rental expense deduction, respondent followed suit by allowing **appellants** the same deduction for California income tax purposes. Unlike the IRS, however, no corresponding disallowance of other deductions was made. Thus, the net effect of respondent's action was a reduction in its **original** assessments. The revised assessments were paid by appellants and a claim for refund was filed. Respondent's **denial** of that claim gave rise to this timely appeal.

Appeal of Jean and Bessie Pajus

It is well established that deficiency assessments which are based upon a federal audit are presumptively correct and the burden of proving such assessments erroneous is on the taxpayer. (Todd v. McColgan 89 Cal. App. 2d 509 [201 P. 2d 414]; Appeal of William B. and Sally Spivak, Cal. St. Bd. of Equal., Feb. 26, 1969; Appeal of Samuel and Ruth Reisman, Cal. St. Bd. of Equal., March 22, 1971; Appeal of Thomas L. and Wylma Gore, Cal. St. Bd. of Equal., Dec. 11, 1973; Appeal of Elmer H. and Joan C. Thomassen, Cal. St. Bd. of Equal., Feb. 19, 1974.) Furthermore, mere assertions of the incorrectness of an assessment do not shift this burden to respondent. (Todd v. McColgan, supra; Appeal of Thomas L. and Wylma Gore, supra.)

Appellants assert the incorrectness of the final federal determination and resulting state assessments on two grounds. First, they allege that at a meeting held between appellants and respondent on June 8, 1970, respondent conceded that appellants were entitled to the full amount of the rental expense deductions claimed for each year on appeal. Second, appellants contend that for the three years immediately following the last appeal year, both the IRS and respondent allowed appellants the full amount of their claimed rent deductions.

Appellants have offered no substantiation of the alleged concession made by respondent other than their own self-serving assertions. Accordingly, they have failed to sustain their burden of proving the incorrectness of the assessments on this ground. As to the actions of the IRS and respondent in years subsequent to the appeal period, suffice it to say these actions are not in issue here and are irrelevant to a determination of the correctness of respondent's assessments for the years on appeal.

Based on the foregoing analysis, respondent's assessments in this case must be sustained.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Jean and Bessie Pajus

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Jean and Bessie Pajus for refund of personal income tax in the amounts of \$85.57, \$174.54, and \$161.36 for the years 1966, 1967, and 1968, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 2nd day of February, 1976, by the State Board of Equalization.

William G. Bynum, Chairman
George E. Kelly, Member
Robert W. Kain, Member
_____, Member
_____, Member

ATTEST: W. W. Lemlop, Executive Secretary