



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DENNIS G. DAVIS)

Appearances:

For Appellant: Dennis G. Davis, in pro. per.
For Respondent: Brian **Toman**
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 Dennis G. Davis against proposed assessments of additional personal income tax and penalties in the total amounts of \$194.03, \$500.55, and \$450.23 for the years 1971, 1972, and 1973, respectively.

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On his California personal income tax returns for the years in question, filed jointly with his then wife, appellant Dennis G. Davis claimed deductions and credits in the following amounts:

	<u>1971</u>	<u>1972</u>	<u>1973</u>
Capital loss	\$2,000	\$1,000	\$1,000
Supplemental capital loss	300		
Moving expenses	1,600		
Adjustments to income		6,450	
Business loss			2,750
Loss described as pensions			2,000
Other tax credit	24	8	8

The returns did not contain any schedules or other explanation of these items.

After an examination of appellant's 1972 return, respondent requested by letter that he furnish additional information on the \$6,450 adjustment to income for that year. Appellant's reply letter did not supply the requested information. Rather, appellant demanded to know who had authorized an audit of his return and to whom he should send the bill for the costs of gathering the additional information.

Respondent then sent appellant's 1972 return to its field office for an audit. Respondent also sent his returns for 1971 and 1973 for an audit because it believed that auditing several years at one time would be more efficient. Thereafter, respondent's auditor contacted appellant several times by letter and by telephone in an attempt to obtain substantiation or documentation of the items listed above. In reply appellant merely repeated his demands to know how he had been selected for audit. Ultimately, on January 31, 1975, the auditor notified appellant by letter that failure to supply the requested information would result not only in disallowance of the claimed deductions and credits, but also in a 25 percent penalty. When appellant failed to comply, respondent issued the proposed assessments and penalties in question.

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Appellant's sole contention on appeal is that respondent's audit procedure is biased. He claims that he was unfairly picked out for audit because he is Jewish. Respondent's standard practice, however, is to choose a number of returns for audit by random selection, and it appears that appellant's returns were selected in this manner. -There is nothing in the record to indicate that appellant was unfairly picked out because of his race, or religion.

It is well settled that the taxpayer bears the burden of proving that he is entitled to claimed deductions and credits. (Welch v. Helvering, 290 U.S. 111 [78 L. Ed. 2121 (1933).]) Appellant has made no attempt to substantiate or document the items claimed on his returns for the years at issue. Accordingly, we conclude that respondent properly disallowed those items.

The 25 percent penalty was also proper. Section 18683 and former section 18682 of the Revenue and Taxation Code specifically authorize such a penalty for failure to furnish information upon notice and demand, unless the failure is due to reasonable cause and not willful neglect. Appellant's belief that he was unfairly selected for audit is not reasonable cause for failing to answer respondent's inquiries. (Cf. Appeal of Wing Edwin and Faye Lew, Cal. St. Bd. of Equal., Sept. 17, 1973.)

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,

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IT IS HERERY 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 Dennis G. Davis against proposed assessments of additional personal income tax and penalties in the total amounts of \$194.03, \$500.55, and \$450.23 for the years 1971, 1972, and 1973, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of October, 1976, by the State Board of Equalization.

William A. Bennett, Chairman
James J. [unclear], Member
Philip [unclear], Member
_____, Member
_____, Member

ATTEST: W. W. [unclear], Executive Secretary