

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
JACK CAPLAN }

For Appellant: Jack Caplan, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John A. **Stilwell**, Jr.
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 Jack Caplan against a proposed assessment of additional personal income tax in the amount of \$80.32 for the year 1970.

Appeal of Jack Caplan

In 1973 respondent received a revenue agent's report **indicating** that the Internal Revenue Service had changed appellant's reported federal income tax liability for 1970. The change resulted from the disallowance of a deduction claimed for earthquake damage in the amount of \$2,500. Upon examining appellant's state income tax return for the same year, respondent found that appellant had claimed an identical earthquake casualty loss, and had also taken additional personal exemption credits for his own blindness and for his son, who qualified appellant as a head of household. Respondent disallowed the casualty loss on the basis of the federal audit report and also disallowed both additional personal exemption credits. These actions gave rise to the deficiency in question.

On appeal appellant has challenged only the disallowance of his alleged casualty loss. A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that respondent's determination is erroneous. (Appeal of Donald G. and Franceen Webb, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.) Appellant has submitted evidence that a dwelling he owned was declared a nuisance in 1973 after an inspection conducted by the Los Angeles City Department of Building and Safety. The inspector's report indicated that the building had suffered serious structural damage in numerous respects. As a result of the inspection, appellant had the building **demolished and** removed from his property. This is the extent of appellant's evidence, however, and it is insufficient to establish his entitlement to a casualty loss in any amount. He has not shown that the damage resulted from an earthquake or any other type of casualty. Neither has he shown what the fair market value of the building was before and after the damage occurred, or what his basis was in the building. Under respondent's regulations, such proof is necessary to fix the amount of any casualty loss. (See Cal. Admin. Code, tit. 18, reg. 17206(g), subd. (2).) Accordingly, we must conclude that appellant has failed to prove that he incurred a deductible casualty loss of \$2,500 or any other amount. Respondent's action in this matter must therefore be sustained.

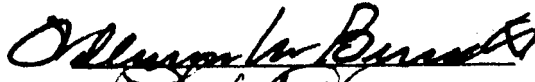
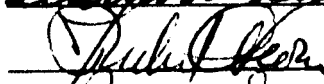
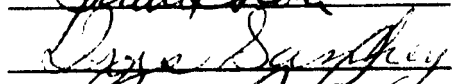
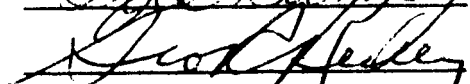
Appeal of Jack Caplan

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 Jack Caplan against a proposed assessment of additional personal income tax in the amount of \$80.32 for the year 1970, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of June , 1977, by the State Board of Equalization.

 Chairman
 , Member
 , Member
 , Member
_____, Member

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