

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
RICHARD J. AND DAPHNE C. BERTERO)

For Appellants: Victor A. Levi
 Certified Public Accountant

For Respondent: Bruce W. Walker
 Chief Counsel

Jeffrey M. Vesely
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 Richard J. and Daphne C. Bertero against proposed assessments of additional personal income tax in the amounts of \$280.87 and \$221.08 for the years 1973 and 1974, respectively.

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On their 1973 and 1974 joint income tax returns, appellants claimed business expense deductions for entertainment, an office in the home, parking and telephone service. Allegedly these expenses related to the real estate business activities of appellant Richard J. Bertero. Following an audit of the returns, respondent disallowed some of the claimed expenses for lack of substantiation, and issued notices of proposed assessments. At the protest hearing, appellants submitted further documentation which included diaries and credit card vouchers for both home and restaurant entertaining. The vouchers contained only first or last names of individuals and did not state a business purpose for the expenditures. The diaries were similar but also failed to indicate the cost of each entertainment occasion. Respondent allowed a portion of the restaurant expenses amounting to about \$2,000.00 a year. Fifty percent of the home entertainment expenses supported by vouchers were allowed but no expenses based on the home diary were allowed. All of the telephone and parking expense deductions were allowed. It is from these revised assessments that appellants filed this appeal.

The table below indicates the business expenses at issue on appeal and respondent's action with respect to them.

<u>Expense</u>	<u>Amount Claimed</u>	<u>Amount Allowed</u>
<u>1973</u>		
Entertainment	\$6,433.00	\$3,730.00
Office in Home	480.00	-0-
<u>1974</u>		
Entertainment	\$6,539.00	\$3,831.00
Office in Home	480.00	-0-

In the course of this appeal, appellants stipulated to the disallowance of the claimed office in home expenses. Therefore, the sole issue to be decided is whether respondent properly disallowed, for lack of substantiation, a portion of the expenditures claimed for entertainment.

We note first that a determination by respondent that a deduction should be disallowed is presumed correct. (Appeal of Robert V. Erilane, Cal. St. Bd. of Equal., Nov. 12, 1974.) The burden is on appellants to show that they have fulfilled the statutory requirements for claiming the deduction in question. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 13481 (1934)].) In this case, appellants must provide adequate records to corroborate the claimed expenditures for entertainment. Further, those records must

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show that the expenditures were directly attributable to Mr. Bertero's business. (Rev. & Tax. Code, § 17202, subd. (a)(2); Cal. Admin. Code, tit. 18, reg. 17202(a); Rev. & Tax. Code, § 17296.)

We find that respondent disallowed only those expenses which were not substantiated in accordance with the law cited directly above. Mere statements that expenses were incurred are insufficient as proof. (Appeal of Robert J. and Evelyn A. Johnston, Cal. St. Bd. of Equal., April 22, 1975.) Nor is it enough to show that expenditures were made, without showing their direct relation to a business purpose. (Appeal of Bruce D. and Donna G. Varner, Cal. St. Bd. of Equal., July 26, 1978; Appeal of Harold-J. and Jo Ann Gibson, Cal. St. Bd. of Equal., Oct. 6, 1976.) Appellants argue that they could have produced more documentation in support of their position. However, the evidence which appellants offered (Mr. Bertero's commission sheets allegedly showing the income generated by entertaining clients) would not corroborate their claims in the manner required by statute. We must base our conclusion on the record before us and that record is insufficient to overcome respondent's determination.

We have also considered appellants' claim that the Internal Revenue Service accepted their records for similar deductions in 1972 and 1975, and that respondent should therefore accept this federal action as proof of compliance by appellants with substantiation requirements in the years on appeal. However, in this respect we **agree** with respondent that our decision in the Appeal of Ruth Wertheim Smith, decided October 17, 1973, is **controlling**. The fact that proof of deductions may have been available for one taxable year does not mean that the taxpayer may simply "transfer" that proof to a different year to support similar claimed deductions.

Accordingly, we conclude that respondent's action in this matter must be sustained.

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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 Richard J. and Daphne C. Bertero against proposed assessments of additional personal income tax in the amounts of \$280.87 and \$221.08 for the years 1973 and 1974, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this **8th** day of **February**, 1979, by the State Board of Equalization.

William R. Bennett, Chairman
Paul J. [unclear], Member
Robert Kelly, Member
_____, Member
_____, Member