

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
SERGIO AND JEAN A. TOMBINI }

For Appellants: Sergio Tombini, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

James C. Stewart
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 Sergio and Jean A. Tombini against proposed assessments of additional personal income tax in the amounts of **\$1,396.35** and **\$1,181.98** for the years 1969 and 1970, respectively. Subsequent to the filing of **this appeal**, appellants paid the proposed assessments plus interest. Accordingly, the appeal is treated as from the denial of claims for refund pursuant to section 19061.1 of the Revenue and Taxation Code.

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Appellants, husband and wife, filed joint federal and California personal income tax returns for the years 1969 and 1970 wherein they claimed deductions for "prepaid feeding expenses for cattle." Respondent disallowed the deductions on the basis of corresponding action taken by the Internal Revenue Service. The sole issue presented by this appeal is whether respondent properly disallowed the deductions in question on the basis of the corresponding federal action.

This board has consistently held that proposed assessments issued by respondent on the basis of corresponding federal action are presumed to be correct, and that the burden rests with the taxpayer to prove otherwise. (Appeal of Wing E. and Faye D. Lew, Cal. St. Bd. of Equal., Aug. 15, 1978; Appeal of Paritem and Janie Poonian, Cal. St. Bd. of Equal., Jan. 4, 1972; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959; see also Rev. & Tax. Code, § 18451.) Moreover, the taxpayer's mere assertion of the incorrectness or impropriety of the federal determination does not shift the burden to respondent to justify the assessment and the correctness thereof. (See Todd v. McColgan, 89 Cal. App. 2d 509, 514 [201 P.2d 414] (1949); Appeal of Samuel and Ruth Reisman, Cal. St. Bd. of Equal., March 22, 1971.)

Appellants have failed to present any evidence that the federal **disallowance** of their deductions for prepaid cattle feed expenses was erroneous or improper. Appellants have submitted a revised federal audit report which indicates that the federal tax deficiencies for 1969 and 1970 were eliminated by virtue of 1971 and 1972 net operating losses carried back to the prior years. However, the federal loss carryback provisions have no counterpart under the California Personal Income Tax Law. (Appeal of J. Douglas White, Cal. St. Bd. of Equal., April 5, 1976.)

In the absence of any evidence to the contrary, we must conclude that respondent's action in **disallowing** appellants' deductions for prepaid cattle feed expenses on **the basis of** corresponding federal action was proper. Accordingly; respondent's action in **this matter** must be sustained.

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 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 claim of Sergio and Jean A. Tombini for refund of personal income tax in the amounts of **\$1,396.35** and **\$1,181.98** for the years 1969 and 1970, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of
June , 1979, by the State Board **of** Equalization.

William B. Burr, Chairman
Wm. H. Thompson, Member
Richard D. Dyer, Member
Gov. C. C. Cress, Member
_____, Member