

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
LEOPOLDO M. AND L. C. **SUNGA**)

For Appellants: **Leopoldo M. Sunga**, in pro. per.

For Respondent: Jean Harrison Ogrod
Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of **Leopoldo M. and L. C. Sunga** against a proposed assessment of personal income tax in the amount of \$71.99 for the year 1973 and on the protest of **Leopoldo M. Sunga** against proposed assessments of additional personal income tax in the amounts of \$368.05, \$345.00 and \$401.35 for the years 1974, 1975 and 1976, respectively. Subsequent to the filing of these appeals respondent revised the proposed deficiency for 1976 to \$323.00.

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L. C. Sunga is a party to this action solely because she filed a joint 1973 return with **Leopoldo M. Sunga**. Therefore, **Leopoldo M. Sunga** will hereafter be referred to as appellant.

The common issue presented by these appeals is whether appellant has established **that** he is entitled to certain adjustments to his income.

During the years under appeal, appellant **Leopoldo M. Sunga** was employed as a laboratory technician by W. R. Grace & Co. He filed a timely 1973 California joint return with L. C. Sunga; he also filed timely California returns as a single taxpayer for years 1974, 1975, and 1976. On each of these returns, appellant claimed various adjustments to income. Among other things, appellant deducted the auto expenses which he allegedly incurred in going to and from work.

On June 6, 1977, respondent obtained a revenue agent's report showing that the Internal Revenue Service had disallowed some adjustments to income claimed by appellant on his 1974 federal return. Based upon the federal report, respondent subsequently made similar changes to appellant's state return. In addition, respondent examined appellant's returns for 1973, 1975, and 1976 and determined that most of the claimed deductions were not authorized under California law and, further, **that none of the items listed as adjustments** to income were substantiated. As a result, respondent issued timely proposed assessments to reflect its determination. In the assessments, respondent only allowed the standard deduction for years 1973 through 1975. Through inadvertence, respondent originally did not allow the standard deduction for 1976, but subsequently reduced the proposed assessment for 1976 to reflect the allowance of the standard deduction. Appellant disagreed with the deficiency assessments and these appeals followed.

It is axiomatic that tax deductions are a matter of legislative grace, and **the burden** is on the taxpayer to show he is entitled to deductions claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348] (1934); Deputy v. du Pont, 308 U.S. 488 [84 L. Ed. 416] (1940).) **Appellant has offered no** evidence to substantiate his adjustments to income.

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Furthermore, none of the contentions made by appellant have any merit. Here the proposed assessments of additional personal income tax were issued within the limitation period prescribed by section 18586 of the Revenue and Taxation Code. Interest on the deficiencies was applied in accordance with the requirements of section 18688 of the Revenue and Taxation Code. (See Appeal of Henry L. and Joyce Stein, Cal. St. Bd. of Equal., Dec. 5, 1978.) Interest is not a penalty imposed upon a taxpayer for wrong-doing, but is merely compensation for the use of money.

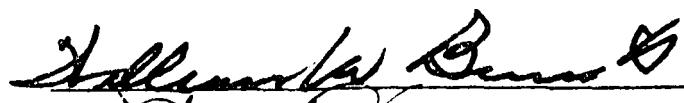

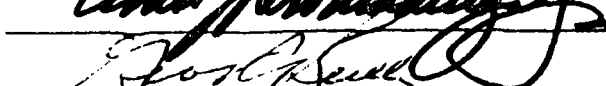
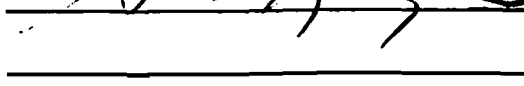
For the reasons expressed above, respondent's action in this matter must be sustained.

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,,

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 **Leopoldo M. and L. C. Sunga** against a proposed assessment of additional personal income tax in the amount of \$71.99 for the year 1973 and on the protest of **Leopoldo M. Sunga** against proposed assessments of additional personal income tax in the amounts of \$368.05, \$345.00 and \$401.35 for the years 1974, 1975 and 1976, respectively, be and the same is hereby modified to reflect respondent's revision of the assessment for the year 1976 to \$323.00. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this **14th** day of November , 1979, by the State Board of Equalization.

 , Chairman
 , Member
 , Member
 , Member
_____, Member