



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
 ) No. **82A-1479-GO**  
 ROBERT R. TELLES )

For Appellant: Robert R. Telles,  
in pro. per.

For Respondent: **Lazaro L. Bobiles**  
Counsel

O P I N I O N

This appeal is made pursuant to section **18593-1/** of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Robert R. Telles against a proposed assessment of additional personal income tax in the amount of **\$2,930.70** for the year 1976.

1/ Unless otherwise specified, all section references **are** to sections of the Revenue and Taxation Code as in effect for the year in issue.

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The sole issue presented is whether respondent properly disallowed certain interest expense deductions claimed by appellant during the year at issue.

During the year at issue, appellant and Mr. and Mrs. Daniel C. **Zilafro** were partners in the operation of Mount Rubidoux Rehabilitation Hospital (hereinafter "partnership"). (Resp. Ex. A.) On his 1976 California personal income tax return, appellant reported income from the partnership in the amount of \$16,559 (Resp. Ex. B) and a personal deduction for interest paid of \$22,778. (Resp. Ex. C.) Upon audit, journal entries submitted by appellant indicated that his share of a partnership note had accrued **\$22,776.20** in interest of which \$15,950 had been paid. (Resp. Ex. I.) A letter attached to those documents indicated that the partnership sent the creditor of the subject note a "monthly impound" check out of which monthly interest payments on behalf of appellant were, in part, paid. (Resp. Ex. I.) Based on this information, respondent decided that the \$22,778 claimed as a personal interest expense was, in fact, the accrued **interest for** the partnership reflected in the journal noted **above (i.e. \$22,776.20 entry)**. Thus, respondent concluded that the subject interest expense claimed by appellant was: (1) not the personal liability of appellant, but that of the partnership; (2) as such, that expense was properly reflected at the partnership level and the **net amount of partnership income in appellant's** return already included this expense; and (3) in any case, the \$22,778 entry reflected interest accrued during the year at **issue rather** than actually paid, which a cash basis taxpayer such as appellant could not properly deduct.

Apparently, during the audit, appellant was unable to clarify the confusion between the partnership journal entry and the personal interest expense claimed on his return. (Resp. Br. at 2.) Accordingly, respondent concluded that appellant had not "satisfactorily substantiated" his entitlement to the subject interest deduction.

It is well settled that deductions are a matter of legislative grace, and the taxpayer bears the burden of establishing his entitlement to the claimed deductions. (See, e.g., New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934).) In order to carry that burden, the taxpayer must point to an applicable statute and show by credible evidence that he comes within its terms. Unsubstantiated assertions by the taxpayer

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are not sufficient to satisfy the burden of proof. (New Colonial Ice Co. v. Helvering, supra; Appeal of Otto L. Schirmer, et al., Cal. St. Bd. of Equal., Nov. 19, 1975.) In this appeal, appellant has offered no evidence to establish the deductibility of the interest expense disallowed by respondent. Accordingly, we must conclude that appellant has failed to carry the burden of proving his entitlement to the subject deduction and that, therefore, respondent's action must be sustained.



## ORDER

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 Robert R. Telles against a proposed assessment of additional personal income tax in the amount of **\$2,930.70** for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day  
Of March , 1986, by the State Board of Equalization,  
with Board Members Mr. Nevins, Mr. Collis, Mr. Dronenburg  
and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Conway H. Collis</u>	, -Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Walter Harvey*</u>	, Member
<u></u>	, Member

\*For Kenneth Cory, per Government Code section 7.9.