



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ESTATE OF **AMIR NATAN**, DECEASED, AND) No. **84A-1216-KP**
ESTATE OF ROOHI **NATAN**, DECEASED)

-Appearances:

. For Appellants: Herbert **B.** Wittenberg
Certified Public Accountant

For Respondent: Karen D. Smith
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 the Estate of Amir **Natan**, deceased, and Estate of Roohi **Natan**, deceased, against proposed assessments of additional personal income tax in the amounts of \$423 and \$1,558 for the years 1980 and 1981, respectively.

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

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Estate of Roohi Natan, Deceased

The issue presented by this appeal is whether certain confiscation losses allegedly sustained during the years in question were properly denied.

The taxpayers' decedents moved **to the** United States from Iran in 1978. **At** the time of their departure, they left their three-story house in the care of a relative to rent on their behalf. They also left a savings account in an Iranian bank. The Iranian government allegedly confiscated the savings account in 1980 and the house in 1981. The decedents claimed these losses on their California personal income tax returns **during** the year in which they allegedly sustained the **loss**. Upon audit of the returns for the years in **question**, the Franchise Tax Board requested substantiation of the losses. No substantiation was offered **by appellants**. **The failure** to substantiate the losses led to respondent's issuance of the present assessments. Appellants' subsequent protest was denied and this appeal followed.

The United States Supreme Court clarified the general rule regarding deductions in New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 [78 L.Ed. 1348, 1352] (1934), wherein it stated:

Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision **therefor** can any particular deduction be allowed.

* * *

Obviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes **within its** terms.

Respondent's determination that a deduction should be disallowed is presumed to be correct and the taxpayer bears the burden of proving that he is entitled to the claimed deduction. (Appeal of J. T. and Mildred Bellew, Cal. St. Bd. of Equal., Aug. 20, 1985; Appeal of James C. and Monablance A. Walshe, Cal. St. Bd. of Equal., **Oct. 20, 1975.**) An unsupported assertion that respondent is incorrect in its determination does not satisfy the taxpayer's burden. (Appeal of James C. and Monablance A. Walshe, **supra.**)

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On appeal, appellants have failed to produce evidence to support their claim that the decedents owned the savings account and house in question, that the savings account and the house were worth the amounts claimed, or that the savings account and the house were confiscated during the years for which the deductions were claimed. Furthermore, appellants have failed to point to the specific statute which would allow for the deduction of property confiscated by a foreign government under color of authority.. ^{2/} (See New Colonial Ice Co. v. Helvering, supra.) **As sympathetic** as we may be **towards** the **Natans'** situation, we cannot reverse respondent's determination without a factual or legal basis for doing so. (Appeal of James C. and Monablanche A. Nalshe, supra.)

Consequently, we must conclude that appellants have failed to sustain their burden of proving that respondent's denial of the deductions was erroneous. Accordingly, respondent's action in this matter must be sustained.

2/ Federal courts faced with similar arguments supported by the proper evidence have held that the confiscation of property not used in a trade or business by a foreign government acting under color of authority is not a deductible loss provided for by statute.. (See, e.g., Farcasanu v. Commissioner, 436 F.2d 146 (D.C. Cir. 1970); Powers v. Commissioner, 36 T.C. 1191 (1961).) If the confiscatory action was upon property **that the** taxpayer claims he used in his trade or 'business or that he claims was used in a venture entered into for profit, the usual burden is upon the taxpayer to prove that fact as well as the date of the confiscation and value of the loss. (Weinmann v. United States, 278 F.2d 474 (2nd Cir. 1960).)

