BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
SOL AND MILLIE ERLIECH)

For Appellants: Sol Erliech, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Jon Jensen
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 Sol and Millie Erliech against a proposed assessment of additional personal income tax in the amount of $110.31 for the year 1975.

Appeal of Sol and Millie Erliech

The only issue presented by this appeal is whether appellants are entitled to a deduction for additional theft losses.

Appellant Sol Erliech is employed by respondent as a tax representative. On their 1975 California personal income tax return, appellants claimed various deductions, including the unreimbursed portion of a theft loss which occurred on January 5, 1975. Upon audit, the theft loss deduction was allowed but certain other deductions were disallowed for lack of.substantiation.

Appellants protested the deficiency assessment which resulted from the disallowed deductions and, at the protest hearing in 1977, some of the disputed deductions were substantiated and allowed. At this same hearing, however, appellants advised respondent that they had incurred additional theft losses on January 5, 1975, in the amount of $3,851. Allegedly, these losses were not claimed earlier because they had not been discovered immediately after the theft. As substantiation, appellants submitted an itemized list of the items they claimed had been stolen and two pages, of a 1965 jewelry appraisal. Respondent disallowed the deduction of the additional theft losses when appellants failed to explain the reasons for the delay in reporting the additional losses, to disclose the precise date or dates when they first discovered the items were missing, and to explain certain other inconsistencies in their claim.

A nonbusiness theft loss in excess of $100 is deductible if not compensated for by insurance or otherwise. (Rev. & Tax. Code, § 17206, subds. (a) & (c) (3).) However, it is well established that deductions are a matter of legislative grace and that the taxpayer has the burden of substantiating his entitlement to each claimed deduction. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 13481 (1934); Appeal of James C. and Monablanche A. Walshe, Cal. St. Bd. of Equal., Oct. 20, 1975.) In the instant case, appellants' only evidence of the additional theft loss was their uncorroborated assertion. This board has consistently held that such an unsupported assertion by a taxpayer is not sufficient to satisfy the required burden of proof. (See, e.g., Appeal of James C. and Monablanche A. Walshe, supra; Appeal of Wing Edwin and Faye Lew, Cal. St. Bd. of Equal., Sept. 17, 1973; Appeal of Nake M. Kamrany, Cal. St. Bd. Of Equal., Feb. 15, 1972.) This is particularly true here where appellant, as a tax representative for respondent, is knowledgeable about the substantiation requirements for a deduction.

Based upon the record before us, we must conclude

that appellants have failed to meet their burden of substantiating the claimed additional theft loss deduction.

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 Sol and Millie Erliech against a proposed assessment of additional personal income tax in the amount of $110.31 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of August, 1979, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member