

Appeal of Linn L. and Harriett E. Collins

The sole issue for determination is whether respondent properly disallowed certain expenses and losses claimed by appellants.

Appellants' joint state personal income tax returns for 1974 and 1975 were audited. During the audit, appellants were requested to substantiate the deductions claimed for medical expenses, taxes, interest expense and contributions. The results of respondent's examination were:

Medical Expenses: Appellants were unable to verify any expenses for 1974 due to incomplete records. However, respondent agreed that it would consider the 1975 records applicable to 1974 also.. Since respondent could verify only \$1,325 in 1975 medical expenses, respondent disallowed \$551 for both years.

Taxes: Appellants paid taxes on property located at **300 San** Gabriel Court, Sierra Madre, California, in the amount, of \$1,180 in both 1974 and 1975. Since appellants did not own this property during the appeal **years**, respondent denied the deductions. (See, e.g., John Patrick Feeney, ¶ 66,009 P-H Memo. T.C. (1966); Appeal of Robert J. and Margaret A. Wirsing, Cal. St. Bd. of Equal., Aug. 1, 1974) For 1975 respondent also disallowed **\$180 of state** disability insurance fund (SDI) contributions because, commencing in 1975, SDI contributions were determined to be nondeductible state income taxes. (Appeal of Arnold E. and Mildred H. Galef, Cal. St. Bd. of Equal., **April 10, 1979.**) Additionally, in 1975 appellants incorrectly computed their 'gasoline and sales tax deductions from the table provided for that purpose. However, respondent did allow an additional unclaimed \$70 sales tax deduction incurred in the purchase of an automobile. These adjustments resulted in reducing the deductions **claimed for** sales tax and gasoline tax by \$17 and \$58, respectively.

Interest Expense: Appellants were able to verify only \$324 paid in 1974 and \$789 paid during 1975. Accordingly, the remaining amounts claimed as interest expense deductions for those years were disallowed.'

Contributions: Appellants claimed donations in varying amounts to approximately 70 organizations each year. Although respondent requested verification 'of only a sampling of these donations, appellants refused to provide any. **Accordingly**, respondent denied all the deductions claimed for charitable contributions.

Appeal of Linn L. and Harriett E. Collins

Respondent's action may be summarized as follows:

<u>1974</u>	<u>Reported</u>	<u>Disallowed</u>	<u>Allowed</u>
Medical Expenses	\$ 1,967	\$ 551	\$1,416
Taxes	4,370	1,180	3,190
Interest Expenses	2,463	2,139	324
Contributions	<u>1,432</u>	<u>1,432</u>	-
Total	<u>\$10,232</u>	<u>\$5,302</u>	<u>\$4,930</u>
 <u>1975</u>			
Medical Expenses	\$ 1,876	\$ 551	\$1,325
Taxes	4,920	1,435	3,485
Interest Expenses	4,584	3,795	789
Contributions	<u>1,621</u>	<u>1,621</u>	-
Total	<u>\$13,001</u>	<u>\$7,402</u>	<u>\$5,599</u>

Finally, appellants applied a \$2,000 capital loss each year against their other income. Respondent reduced the claimed capital loss in each year to the \$1,000 statutory maximum. (See Rev. & Tax. Code, § 18152, subd. (a) and subd. (b).)

Respondent's action resulted in increasing appellants' taxable income by \$6,302 for 1974 and \$8,402 for 1975. It is from this action that appellants appeal.

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. 13481 (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 are not sufficient to satisfy the burden of proof. (New Colonial Ice Co. v. Helvering, supra; Appeal of Otto L. Schirmer, Cal. St. Bd. of Equal., Nov. 19, 1975) In this appeal appellants have offered absolutely no evidence to establish the deductibility of any of the items disallowed by respondent. Accordingly, we must conclude that appellants have failed to carry the burden of proving their entitlement to deductions in any amount greater than that allowed by respondent. Furthermore, respondent's action in denying the deductions claimed for taxes paid on property not owned, SDI

