

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GEORGE A. WALKER) No. 82R-1835-SW

For Appellant: David Rooks

For Respondent: Grace Lawson
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), ^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of George A. Walker for refund of personal income tax in the amount of \$879 for the year 1977.

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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On his 1977 tax return, appellant claimed an employee business expense deduction in the amount of \$7,111 for travel, meals, and lodging. In addition, he claimed a \$593 moving expense deduction. Respondent audited appellant's return and issued a notice of proposed assessment which disallowed both deductions. Appellant paid the additional assessed liability and filed a subsequent "amended" return which simply restated appellant's initial return. This return was considered to be a claim for refund. When respondent denied the claim for refund, appellant filed a timely appeal.

Quite clearly, appellant has the burden of proving that respondent's determination of tax, which is presumed to be correct, is, in fact, erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949).) In his appeal letter dated March 20, 1983, appellant merely states, without any supporting evidence or argument:

Refund was disallowed because auditor could not decide whether taxpayer was a non-resident or resident of California.

Taxpayer worked from a company based in Colorado from the years 1975 to 1978 in the following states: Virginia, California and Arizona.

These statements not only do not represent the facts involved in the case, but they do not provide any evidence which would support a decision in appellant's favor. In other words, to be successful, appellant must show why his employee business expense and moving expense deductions should have been allowed. Because he has not provided any evidence which would rebut the presumption that respondent's determination is correct, respondent's action must be sustained.

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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 19060 of the Revenue and Taxation Code. that the action of the Franchise Tax Board in denying the claim of George A. Walker for refund of personal income tax in the amount of **\$879** for the year 1977, be and the same is hereby sustained.

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

Richard Nevins , Chairman
Conway H. Collis , Member
William M. Bennett , Member
Ernest J. Dronenburg, Jr. , Member
Walter Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9