

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
DONALD D. BRIGLIA ) **No. 83A-1308-GO**

For Appellant: Donald **D. Briglia**,  
in pro. per.

For Respondent: Lazaro L. Bobiles  
Counsel

O P I N I O N

This appeal is made-pursuant to section **18593<sup>1/</sup>** of the Revenue and Taxation Code from the action **of the** Franchise Tax Board on the protest of Donald D. Briglia against a proposed assessment of additional. personal income tax in the amount of \$741 for the year 1980.

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 appellant's deduction of \$12,291 in 1980 as a business expense.

In **1978**, appellant and Ronald Paitich entered into a partnership for the development and sale of scientific instruments. Pursuant to the partnership agreement, the two partners each had equal-ownership in the partnership known as Alto Engineering (Alto). In late 1979 and 1980, difficulties arose between the partners which necessitated that the dispute be arbitrated. The arbitrator recommended that Alto be placed in **the hands** of a receiver pending resolution of the dispute or sale of the partnership.

When it was decided that the partnership was to be sold, appellant advanced \$12,291 to the venture on October 27, 1980 (Resp. Br., Ex. **C**) through **his** attorney's trust account. Appellant stated that the reason for this payment "was to prevent the unlawful assumption of control of the partnership by Paitich . . . **[Moreover, such payment]** was considered to be a cost-effective legal expense, which obviated an estimated three day trial **which** would have cost an estimated **\$15,000.**" (Resp. Br., Ex. **E.**)

**On his** 1980 personal income tax return, appellant deducted this advancement as a legal expense. (Resp. Br., Ex. **F.**) Upon audit, respondent concluded that such payment was actually a contribution to capital and, **accordingly**, disallowed its deduction. (Resp. Br., Ex. **G.**)<sup>2/</sup>

On appeal, appellant conceded that deduction as a legal expense "**may** not be the most appropriate category\*" (App. Reply Br. at 9.) However, appellant continues, since he has not received "any kind of tax loss credit" for this payment, 'the **\$12,291** payment 'must be considered a business expense . . . perhaps as a bad debt.. (App. Reply Br. at 9.) Appellant asks this board to determine the most appropriate category for his claimed deduction.

It is, of **course**, well settled that income tax deductions are a matter of legislative grace and the

<sup>2/</sup> At the same time, respondent advised appellant that **he** might be entitled to a capital loss at the time of the disposition of his partnership interest.

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burden of proving **the right** thereto is upon the taxpayer. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934); Deputy v. du Pont, 308 U.S. 488 (84 L.Ed. 416] (1940).) In order to sustain that burden, the taxpayer must be able to point to an applicable **deduction** statute and show that he comes within its terms.

As indicated above, appellant has not pointed to any statute which **would allow** him to deduct the payment in 1980. **Moreover**, based on the record presented, there is no evidence from which we could conclude that he was entitled to deduct the **\$12,291** in 1980. Accordingly, we must find that appellant has not met his burden of proof and hold that respondent's action must be upheld.

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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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the **protest** of Donald D. Briaglia against a proposed assessment of additional personal income tax in the amount of \$741 for the year 1980, be and the same **is** hereby sustained.

Done at Sacramento, California, this -10th. day Of **September, 1986**, by the State Board of Equalization, with Board Members Mr. Nevins, **Mr. Collis**, Mr. Dronenburg and Mr. Harvey present.

<u>    <b>Richard Nevins</b>    </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