



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
RUTH WERTHEIM SMITH )

For Appellant: Edgar Raymond Morris  
Certified Public Accountant

For Respondent: Crawford H. Thomas  
Chief Counsel

Richard A. Watson  
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code<sup>1/</sup> from the action of the Franchise Tax Board on the protest of Ruth Wertheim Smith against a proposed assessment of additional personal income tax in the amount of \$1,955.73 for the year 1963.

<sup>1/</sup> All section references are to the Revenue and Taxation Code unless otherwise designated.

Appeal of Ruth Wertheim Smith

The questions presented for decision are:  
(1) whether respondent properly denied all but **\$1,250.00** of appellant's claimed deduction of **\$17,963.99** for business and investor's expenses: and (2) whether respondent properly denied all of appellant's claimed deduction of an **\$11,500.00** net casualty loss.

Appellant describes herself as an investor in stocks, bonds, and other securities. She is **also the** beneficiary of a trust established by her late husband. On her personal income tax return for 1963 she reported adjusted gross income of **\$50,935.20**. This total was made up of **\$16,499.10** cash dividends, **\$1,752.00** interest, **\$13,970.49** trust distributions, and **\$18,713.61** capital gains. The capital gains resulted from sales of stock exceeding **\$283,000.00**.

Appellant has apparently been seriously-ill since sometime in 1963 or earlier, as indicated in the Appeal of Ruth Wertheim Smith, decided by this board, August 3, 1965. It is alleged that she maintained, throughout 1963, an office in New York City for the conduct of what her representative calls "investment relations." In connection with the operation of that office and the conduct of her investment relations **she** claimed business and investor's expense **deductions** of **\$17,963.99** on her 1963 income tax return, detailed as follows:

CALENDAR YEAR 1963

SCHEDULE OF ITEMIZED DEDUCTIONS

OTHER

Business and Investor's Expenses--  
Incurred relative to the production of income and to the maintenance and preservation of property.

Appeal of Ruth Wertheim Smith

SCHEDULE OF ITEMIZED DEDUCTIONS (Cont.)

|  |                    |
|--|--------------------|
| Office Furniture Depreciation  | \$ 677.17          |
| <b>Bookkeeping</b> and Office Supplies   | 423.65             |
| Auditing Fees  | <b>1,250.00</b>    |
| Secretarial Fees (50% of <b>Total</b> )  | 970.55             |
| Telephones and Telegrams   | 488.27             |
| Office Rent  | 872.10             |
| Gifts and Promotion (50% of Total)   | <b>1,431.02</b>    |
| Storage Charges  | 379.26             |
| Hotels, Subsistence, Travel, and<br>Telephones in Connection With<br>Business Affairs (40% of Total) | <b>11,471.97</b>   |
|  | <hr/>              |
|  | <b>\$17,963.99</b> |

Also on her 1963 return appellant claimed a deduction for a net casualty loss of **\$11,500.00**. This was alleged to be the loss, uncompensated by insurance, due to water damage to clothing and furs stored in a storage room provided for its guests by the Beverly Hills Hotel, Beverly Hills, California. The loss, which was discovered about November 1963, was allegedly due to unseasonal rain in the Los Angeles area at some unspecified earlier date. The hotel reimbursed appellant in the sum of \$500.00, this being the limit of the insurance coverage for each patron.

Five times between April 1967 and November 1968 respondent asked appellant to **provide data** in support of the claimed deductions. **Appellant** did not respond and a

Appeal of Ruth Wertheim Smith

Notice of Proposed Assessment of Additional Tax was issued on November 15, 1968. The proposed assessment was in the amount of **\$1,955.73**, and was based on disallowance of **\$16,713.99** of the business and investor's expenses plus total disallowance of the **\$11,500.00** casualty loss.

All deductions are a matter of legislative grace, and the taxpayer has the burden of proving he is entitled to the deduction claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 13481; Appeal of James M. Denny, Cal. St. Bd. of Equal., May 17, 1962.) On the record before us we must conclude that appellant **has** completely failed to meet her burden of substantiating the claimed deductions. She has repeatedly asserted that there are documents and records available which would establish her contentions, but she has not availed herself of numerous opportunities to submit this information. Appellant states that deductions similar to her claimed **1963** deduction for business and investor's expenses have been allowed in prior years after field audits by both the Internal Revenue Service and respondent, but no records of these audits have been produced. Even if they had been produced, however, they obviously could not prove the amount of **deductions** to which appellant is entitled for another year. The taxpayer's uncorroborated assertions, under the present circumstances, are not sufficient to **satisfy the** burden of proof she must carry. (Birnbaum v. Commissioner, 117 F.2d 395; Appeal of Nake M. Kamrany, Cal. St. Bd. of Equal., Feb. 15, 1972.; Appeal of Wing Edwin and Faye Lew, Cal. St. Bd. of Equal., Sept. 17, 1973.) Accordingly, respondent's denial of appellant's claimed deductions must be sustained.

**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,

Appeal of Ruth Wertheim Smith

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 Ruth Wertheim Smith against a proposed assessment of additional personal income tax in the amount of **\$1,955.73** for the year 1963, be and the same is hereby sustained.

Done at Sacramento, California, this **17th** day of October, 1973, by the State Board of Equalization.

*William G. Sullivan*, Chairman  
*Robert D. Kelly*, Member  
*Robert C. ...*, Member  
\_\_\_\_\_, Member  
\_\_\_\_\_, Member

ATTEST: *W. W. ...*, Secretary