

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ESTATE OF WILLIAM H. RUSSELL)
AND LORRAINE RUSSELL)

For Appellants: Daryl D. Bommer
Certified Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

David M. Hinman
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 the Estate of William J-J. Russell and Lorraine Russell against proposed assessments of additional personal income tax in the amounts of \$518.00 and \$148.86 for the years 1970 and 1971, respectively.

Appeal of Estate of William H.
Russell and Lorraine Russell

The deceased taxpayer, William H. Russell, was an independent management consultant whose business travel throughout the western states was by private plane. He was frequently accompanied by his wife and occasionally by his daughter. In December of 1971, William H. Russell was killed in a plane crash.

Respondent audited the appellants' 1970 and 1971 returns and asked for substantiation of the business purpose of certain travel expenses. Appellants provided receipts, some of which were signed by appellant Lillian Russell or appellants' daughter. Respondent determined that appellants had not proven the business purpose of some expenditures and disallowed a portion of them. Appellants' protest was denied and this appeal followed.

The sole issue to be decided is whether appellants adequately substantiated the claimed deductions for business travel expenses. The applicable statute here is section 17202 of the Revenue and Taxation Code. It provides, in relevant part:

(a) There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including ...

(2) Traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; ...

The above deduction shall not be allowed unless it is "substantiated by adequate records or by sufficient evidence which corroborates the taxpayer's own statement." (Rev. & Tax. Code, § 17296; Appeal of Robert J. and Evelyn A. Johnston, Cal. St. Bd. of Equal., April 22, 1975.) This requirement is in keeping with the well established principle that deductions are a matter of legislative grace and the taxpayer has the burden of proving his entitlement to them. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 13481 (1934)]; Appeal of James P. Denny, Cal. St. Bd. of Equal., May 17, 1962,) Moreover, a determination by respondent that a deduction should be disallowed is supported by a presumption that it is correct and appellant must offer more than unsubstantiated allegations in support of his position. (Appeal of Robert V. Erilane, Cal. St. Bd. of

Appeal of Estate of William II.
Russell and Lorraine Russell

Equal., Nov. 12, 1974; Appeal of Nake M. Kamrany, Cal. St. Rd. of Equal., Feb. 15, 1972.)

Appellants' representative contends that appellants' business records for the years in question are factual and accurate, and that respondent's disallowance of from 15 percent to 33 1/3 percent of the various claimed expenses was arbitrary. The representative argues that because some records were lost in the fatal plane crash, it is unreasonable for respondent to demand substantiation of the expenses at issue. However, it is clear that some of the travel expenses were personal in nature because neither appellant's wife nor his daughter conducted any business. Under such circumstances, absent adequate substantiation, it was both reasonable and proper for respondent to disallow that portion of the claimed expenditures which were attributable to family members whose presence did not serve a bona fide business purpose. (Cal. Admin. Code, tit. 18, reg. 17202(b), **subd. (3).**)

Finally, the fact that some records pertaining to the expenditures may have been lost does not relieve appellants of their burden of proof where no other evidence was presented. (Appeal of Wing Edwin and Faye Lew, Cal. St. Bd. of Equal., Sept. 17, 1973.) Appellants' reference at the oral hearing to Treasury Regulation section 1.274-5(c)(5), pertaining to loss of records through casualty, would in fact support respondent's position because that regulation requires the taxpayer in such circumstances to reasonably reconstruct his expenditures. In any event, the merits of appellant's case are ultimately determined by reference to California law. Appellants simply have not met that burden with respect to the portion of expenses which were disallowed and for that reason, respondent's action must be sustained.

