



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
D. V. HUNTING)

For Appellant: D. V. Hunting, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

James C. Stewart
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 D. V. Hunting against a proposed assessment of additional personal income tax in the amount of \$86.00 for the year 1975.

Appeal of D. V. Hunting

On his 1975 California personal income tax return appellant claimed itemized deductions in the total amount of **\$2,729.96**. Respondent disallowed all the claimed deductions, substituted the standard deduction and recomputed the tax due in accordance with the status reported by appellant which was that of a married person filing a separate return. The resulting proposed assessment was \$86.00. Thereafter, appellant was able to substantiate some of the claimed deductions to respondent's satisfaction. The deductions claimed and respondent's action may be illustrated as follows:

<u>Itemized Deductions</u>	<u>Amount Claimed</u>	<u>Amount Allowed</u>	<u>Amount Disallowed</u>
Taxes	\$ 456.50	\$ 516.55	\$ 0
Interest expense	593.46	593.46	0
Miscellaneous deductions:			
Casualty loss deduction (less \$100 deductible)	460.00	260.00	200.00
Work clothes	100.00	100.00	0
Depreciation	200.00	0	200.00
College expense	<u>920.00</u>	<u>0</u>	<u>920.00</u>
Total	\$2,729.96	\$1,470.01	\$1,320.00

Respondent's action in allowing itemized deductions in the amount of **\$1,470.01** in lieu of the standard deduction resulted in reducing the proposed assessment from **\$86.00** to \$67.66, the amount presently in controversy.

It is well settled that income tax deductions are a matter of legislative grace, and the burden is on the taxpayer to show by competent evidence that he is entitled to any deduction claimed. (Deputy v. du Pont, 308 U.S. 488 [84 L. Ed. 4161 (1940); New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348] (1934).)

The first adjustment involves appellant's claimed casualty loss of \$460.00 (\$560.00 less \$100.00 limitation). The Revenue and Taxation Code provides for the deduction of any theft loss sustained during the taxable year and not compensated for by insurance or otherwise. (Rev. & Tax. Code, § 17206, subd. (a)(3).) The amount of the deduction is limited to the amount by which it exceeds \$100.00. (Rev. & Tax. Code, § 17206, subd. (a).) The burden of proving his entitlement to the deduction is, of course, on the taxpayer. (Appeal of

Anneal of D. V. Hunting

Jack Caplan, Cal. St. Bd. of Equal., June 28, 1977.) **Appel-**lant states that the items involved were small tools and money which were taken by "friends". He also estimated the amount of the loss as \$355.00 instead of the \$560.00 shown on his return. However, there is no indication how this amount was determined. Appellant did not report the matter to the **police** and apparently made no effort to recover the property. Respondent allowed the loss in the amount of \$200.00 (\$300.00 less \$100.00 exclusion). Based on the limited information in the record, we cannot conclude that respondent's action was unreasonable.

Appellant also deducted \$200.00 for depreciation which represented the replacement of pipes on land which he did not own. A taxpayer is entitled to a depreciation deduction for the exhaustion, wear and tear, and obsolescence of property used in the trade or business or of property held **by** the taxpayer for the production of income. (Rev. & Tax. Code, § 17208; see also Cal. Admin. Code, tit. 18, reg. 17208 (a).) In this appeal there is no indication that the property involved was either used by appellant in a trade or business or for the production of income. Under the circumstances, respondent's disallowance of the entire deduction claimed for depreciation was correct.

The final deduction in controversy is college expense in the amount of \$920.00. This amount was expended by appellant on behalf of his daughter's college education. While certain educational expenses incurred by the taxpayer are deductible pursuant to section 17202 of the Revenue and Taxation Code, such expenses must be incurred on the taxpayer's own behalf. (See Cal. Admin. Code, tit. 18, reg. 17202(e).) Since the expenses in question were incurred on behalf of appellant's daughter rather than for appellant's benefit, respondent properly denied the claimed deduction.

For the reasons set forth above, we conclude that respondent's determination of a deficiency in the amount of \$67.66 for the year 1975 must be sustained.

Appeal of D. V. Hunting

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 D. V. Hunting against a proposed assessment of additional personal income tax in the amount of \$86.00 for the year 1975, be and the same is hereby modified to reflect the revised assessment of \$67.66 in accordance with the opinion of the board.

Done at Sacramento, California, this 8th day of February , 1979, by the State Board of Equalization.

Shelley L. Brown, Chairman
Robert D. [unclear], Member
John C. [unclear], Member
_____, Member
_____, Member