

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
COPPER ALLOYS CORPORATION)

For Appellant: Melvin I. Kaufman
Attorney at Law

For Respondent: Kathleen M. Morris
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the pro-test of Copper Alloys Corporation against proposed assessments of additional franchise tax in the amounts of \$3,640 and \$3,735 for the income years ended June 30, 1977 and 1978, respectively.

Appeal of Copper Alloys Corporation

The issue presented by this appeal concerns the propriety of respondent's disallowance of 50 percent of certain business expense deductions claimed by appellant for both of the income years in issue.

Appellant is a California corporation engaged in the purchase and sale of copper, and its income is derived from commissions earned on copper sales. All of appellant's stock is owned equally by Mr. Kracer and Mr. Hyman; the former is appellant's president, the latter is one of two vice-presidents.

The business expenses claimed by appellant during the subject income years included the following:

	<u>June 30, 1977</u>	<u>June 30, 1978</u>
Selling Expenses	\$34,279	\$33,877
Travel	37,149	35,571
Trade Meetings	9,448	13,567
Total	<u>\$80,876</u>	<u>\$83,015</u>

Upon audit of appellant's records and returns, respondent concluded that appellant had failed to keep detailed records in order to substantiate the business nature of all the above claimed expenses. A review of appellant's records included various receipts for, among other items, liquor, cigars, flowers, collectible coins, and pictures. In addition, appellant's documentation revealed that the spouses of appellant's president and vice-presidents frequently traveled with their husbands on company trips; the children of Mr. Kracer and Mr. Hyman also occasionally went on such trips. Upon examination of the documentation supplied by appellant, respondent's auditor arrived at an approximation of the amount of the claimed expenses which was properly deductible. The subject notices of proposed assessment disallowing fifty percent of the business expenses under discussion were subsequently issued. After consideration of appellant's protest, respondent affirmed its action, thereby resulting in this appeal.

Appellant argues that the subject business expense deductions should be allowed in their entirety because allegedly it has supplied the documentation needed to substantiate that those expenses were incurred. Respondent, on the other hand, insists that appellant must settle for a reasonable approximation of allowable business expenses as a consequence of its failure to maintain adequate records establishing the business nature of those expenses.

Section 24343 of the Revenue and Taxation Code allows as deductions all ordinary and necessary business expenses. Deductions from gross income are a matter of legislative grace, and the burden is on the taxpayer to show by competent evidence that he is entitled to any deductions claimed. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934).) In the case of travel and entertainment

Appeal of Copper Alloys Corporation

expenses, this burden of proof may be satisfied by records which establish the business nature of the expenditure, the date, place, and amount of the expense, the recipient of the funds expended, and the nature of the product or service received. (Appeal of National Envelope Corp., Cal. St. Bd. of Equal., Nov. 7, 1961.) The record of this appeal does not reveal that appellant has produced such records..

In previous appeals before this board involving cases where respondent has been satisfied that some of the taxpayer's claimed expenses are deductible, but where the taxpayer has failed to present the evidence necessary to establish a right to the entire claimed amount, we have upheld respondent's invocation of the rule of Cohan v. Commissioner, 39 F.2d 540 (2d Cir. 1930), to allow only a portion of the claimed deduction. (See, e.g., Appeal of Oilwell Materials & Hardware Co., Inc., Cal. St. Bd. of Equal., Nov. 6, 1970; Appeal of National Envelope Corp supra.) Since appellant has failed to produce any evidence upon ~~the~~ which we can base a different or greater approximation of the amount of deductible expenses, respondent's action in this matter must be sustained. (Appeal of Oilwell Materials & Hardware Co., Inc., supra.)

