

Appeal. of. Edward. Benner

The sole issue to be determined is whether appellant has shown that respondent's disallowance of his claimed casualty loss deduction for 1971 was erroneous.

In 1977, respondent discovered that appellant had filed a petition with the **United States Tax Court**. It then requested and received from appellant a copy of the federal audit report for 1971 which had led to appellant's appeal to the tax court. The audit report disallowed appellant's claimed casualty loss deduction for that year in the amount of **\$19,840.00**. Respondent followed the federal audit report, **disallowing** the casualty loss deduction on appellant's 1971 state tax return, and issued the subject proposed assessment. Appellant protested, and respondent delayed further action on the proposed assessment pending the final federal determination.

The tax court sustained the disallowance of the **casualty loss deduction for 1971 in Edward R. Benner, ¶ 77,162 P-H Memo. T.C. (1977)**. The **Ninth Circuit Court of Appeals later affirmed the tax court decision in an unpublished opinion. (Benner v. Commissioner of Internal Revenue, 618 F.2d 115 (1980).)** Appellant **did not** pursue any further appeal. When the final federal determination had been entered, respondent affirmed its proposed assessment. Appellant then filed this timely appeal.

Section 18451 of the Revenue and Taxation Code provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that respondent's determination based on a federal audit report is **presumptively correct**, and the burden is on the taxpayer to prove that the **determination is erroneous. (Appeal of Helen G. Gessele, Cal. St. Bd. of Equal., April 8, 1980; Appeal of Casper W. and Svea Smith, Cal. St. Bd. of Equal., April 5, 1976.)**

Appellant has presented absolutely no evidence relevant to the casualty loss, which involved geological conditions affecting real property. Instead, he has made vague allegations of personal injury caused by radiation from a radar station. Lacking any evidence which might show that respondent's determination was **incorrect**, we must sustain respondent's action.

