



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
PEARL R. BLATTENBERGER)

Appearances:

For Appellant: Pearl R. Blattenberger,
in propria persona

For Respondent: Hebard P. Smith,
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Pearl R. Blattenberger to a proposed assessment of additional personal income tax in the amount of \$41.68 for the year ended December 31, 1947.

For the calendar year 1947 Appellant filed a resident separate personal income tax return upon which she reported as community income one-half of her husband's salary and one-half of the net profit from a business carried on by her husband. On March 21, 1950, at the Respondent's request, Appellant submitted a copy of a Federal Revenue Agent's report concerning her 1947 Federal return. On the basis of this report the Respondent increased Appellant's share of the community business income for that year from \$2,021.70 to \$5,991.49, and asserted the additional tax liability here in question. A notice of the proposed assessment of additional tax, setting forth the details and computation of the deficiency, was mailed to and received by Appellant.

Appellant and her husband had apparently lived apart throughout the year 1947 but divorce proceedings had not been instituted or a property settlement agreement executed. Appellant has not denied that the business carried on by her husband was community property, or that she was required to report one-half of the community income on her separate return. She has not contended that her share of the community income was less than \$5,991.49, but has questioned the deficiency only on the ground that she has not sufficient information concerning the community income upon which to ascertain the correctness of the Respondent's adjustments to her return.

It is well established that the findings of the administrator in proposing an assessment of additional tax are prima facie correct. Greengard v. Commissioner, 29 F.2d 502; Pennant Cafeteria Co., 5 B.T.A. 293; Halle v. Commissioner, 245,

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affirmed 175 F. 2d 500, certiorari denied 338 U.S. 949. The taxpayer cannot merely assert the incorrectness of a determination of a tax and thereby shift the burden to the Respondent to justify the tax and the correctness thereof. Todd v. McColgan, 89 Cal. App. 2d 509. Surely, where a **positive assertion** of incorrectness is ineffectual to shift the burden to the Respondent, an assertion of lack of information on the **subject must** also fail. The action of the Respondent, accordingly, 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**,

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 Pearl R. **Blattenberger** to a proposed assessment of additional personal income tax in the amount of \$41.68 for the year ended December 31, 1947, be and the same is **sustained**.

Done at Sacramento, California, this 27th day of March, 1952, by the State Board of Equalization.

J. L. **Seawell**, Chairman
J. H. Quinn, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell **L.** Pierce, Secretary