



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal)
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MAX AND LILY PETERMAN)

Appearances:

For Appellants: Joseph V. Broffman, Public
 Accountant and Tax Consultant

For Respondent: Burl D. Lack, Chief Counsel;
 Crawford H. Thomas, Associate
 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 protests of Max and Lily Peterman to a proposed assessment of additional personal income tax in the amount of \$513.77 for the year 1951.

For the years 1948 to 1950, inclusive, Appellants filed joint personal income tax returns, For the year 1951 they requested and received an extension of the time to June 15 1952, within which to file their return. On that date they again filed a joint return, on which they reported total income of \$19,833.83. In computing their taxable income they took the standard deduction.

On November 20, 1953, they attempted to file separate returns for 1951, each reporting one-half of a total income of \$30,684.81 and each taking one-half of the total itemized deductions of \$2,981.99. The Franchise Tax Board issued notice of the proposed additional assessment on the basis of the joint return and standard deduction, simply taking into account Appellants' disclosure of additional income.

Since the addition in 1952 of Section 18409 et seq. to the Revenue and Taxation Code, a husband and wife who have filed a joint return are permitted, after the time for filing returns has expired, under circumstances therein prescribed, to make separate returns. These sections are expressly limited in their application to taxable years beginning after December 31, 19510 Stats, 1952, page 132.

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While conceding that prior to the addition of Section 18409 et seq. to the Code it was not ordinarily permissible to change from a joint to separate returns after the time for filing returns had expired, the Appellants nevertheless contend that because of extenuating circumstances it is unjust to bind them to the original basis upon which they computed the tax. The extenuating circumstances upon which they rely all relate to the incapacity of their accountant, due to excessive drinking and the after effects of a serious automobile accident,

The Franchise Tax Board takes the position that Appellants, having filed a joint return within the period prescribed by law, are precluded from filing separate returns after the expiration of that period. It further notes that the original return was signed by both of the Appellants and did not indicate that any other person took part in its preparation,

For the year in question Section 18402 of the Code provided :

"If a husband and wife have for the taxable year an aggregate net income of three thousand five hundred dollars (**\$3,500**) or over, or an aggregate gross income of five thousand dollars (\$5,000) or over -

(a) Each shall make such a return, or

(b) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income. No joint return may be made if husband and wife have different taxable years."

This statute allows the husband and wife to file either a separate or a joint return, but not to change from one to the other after the time to file has expired. Rose v. Grant, 39 Fed. 2d 340, cert. den, 283 U.S. 867. Even though all of Appellants' income was not reported on the joint return, the choice of that basis for computing the tax was final. I, T. 1956 (CB III-1, 228).

Section 17327 of the Code, as it read in 1951, expressly provided that an election to take the standard deduction was irrevocable, Appellants properly signified their election and therefore made a binding election to take the standard deduction.

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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 protests of Max and Lily Peterman to a proposed assessment of additional personal income tax in the amount of \$513.77 for the taxable year 1951, be and the same is hereby sustained,

Done at Sacramento, California, this 12th day of June, 1957, by the State Board of Equalization;

Robert E. McDavid, Chairman

Paul R. Leake, Member

J. H. Quinn, Member

George R. Reilly, Member

Robert C. Kirkwood, Member

ATTEST: R. G. Hamlin, Acting Secretary