BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
J. MORRIS AND LEILA G. FORBES)

Appearances:

For Appellants: J. Morris Forbes, in pro. per.

For Respondent: A. Ben Jacobson
Associate Tax 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 protests of J. Morris and Leila G. Forbes against proposed assessments of additional personal income tax in the amounts of $35.26, $58.30, $87.80, and $29.00 for the years 1960, 1961, 1962, and 1963, respectively, and penalties in the amounts of $8.82 and $11.66 for the years 1960 and 1961, respectively. Subsequent to the filing of this appeal the Franchise Tax Board conceded that the protested penalty in the amount of $11.66 for the year 1961 had been erroneously imposed and stipulated that it should therefore be cancelled.

Appellants are husband and wife. During the years in question Mr. Forbes was an assistant professor at several different colleges located in Arcata, California, Pocatello, Idaho, and Sacramento, California. Mrs. Forbes, meanwhile, operated a boarding house for foreign students in the home which she and Mr. Forbes were purchasing in Berkeley, California. The primary source of revenue for house payments was income derived from room and board.

Appellants did not file a timely California personal income tax return for 1960. However, Mr. Forbes did file returns and pay tax to the State of Idaho on the income which he had received in 1960 and 1961 from a college in Pocatello, Idaho.

Appellants filed a California personal income tax return for 1961 which was received by respondent on April 15, 1962. Thereafter, at the request of respondent, appellants filed a return covering both 1960 and 1961. That combined return was received by respondent on July 23, 1962.

The Internal Revenue Service audited appellants* federal income tax returns for the years 1960 through 1963. As a result of that audit a number of adjustments were made relating to the income and expenses of the boarding house operation and to appellants* itemized personal deductions.'

Respondent's proposed additional assessments were based solely upon the final federal determinations. Respondent's denial of appellants* protests against those assessments gave rise to this appeal.

The first issue concerns the propriety of the penalty proposed by respondent for 1960 under section 18681 of the Revenue and Taxation Code. That provision imposes a penalty for failure to file a timely return, "unless it is shown that the failure is due to reasonable cause and not due to wilful neglect." Mr. Forbes concedes he was a resident of California during the years in question. His only explanation for his failure to file a timely 1960 return with respondent was that he did not believe he needed to file one since he had filed a return in and paid income tax to the State of Idaho.

Federal courts construing the phrase "reasonable cause" as it appears in comparable penalty provisions of the Internal Revenue Code have uniformly held that the mere uninformed and unsupported belief of a taxpayer, no matter how sincere that belief may be, that he is not required to file a tax return is insufficient to constitute reasonable cause for his failure so to file. (Robert A. Henningsen, 26 T.C. 528, aff'd, 243 F.2d 954; Eleanor C. Shomaker, 38 T.C. 192; Russell McCaulley, T.C. Memo., Dkt. No. 101-62, Jan. 9, 1964.) In the absence of evidence showing a reasonable cause for appellants' failure to file a timely 1960 return, respondent's imposition of a penalty for that year must be sustained under the mandate of section 18681 of the Revenue and Taxation Code.

Appellants next contend that respondent improperly issued the proposed assessments here in question solely on the basis of the adjustments made by the Internal Revenue Service relative to appellants' federal income tax liability for the appeal years. In our opinion appellants cannot be sustained on this point.

Section 18451 of the Revenue and Taxation Code requires a taxpayer to report to respondent any changes or corrections made by the Internal Revenue Service in the taxpayer's taxable income as returned for federal income tax purposes. Under section 18451 the taxpayer must concede the accuracy of the final federal determination or state wherein it is erroneous. Respondent's proposed assessment based upon the federal determination is presumed to be correct, and the burden is on the taxpayer to show that it is incorrect. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414]; Helvering v. Taylor, 293 U.S. 507 [79 L. Ed. 623]; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.)

In challenging respondent's proposed assessments appellants contend (1) that the federal disallowance of a $4,600 deduction for amortization was excessive to the extent of $1,000, since the deduction claimed on their income tax return for 1963 should have been $3,600; (2) that they are entitled to an additional sales tax deduction of at least $105 for each year; and (3) that they are entitled to deduct amounts expended by Mr. Forbes for travel and lodging necessitated by his acceptance of teaching assignments away from Berkeley.

(1) With regard to the first item it appears that Mr. Forbes is in error about the amount of the deduction for amortization disallowed by the Internal Revenue Service in appellants' 1963 federal income tax return. The Internal Revenue Service disallowed the entire amount of the deduction, but that amount was $3,600, the correct amount according to Mr. Forbes, rather than $4,600 as he states. Regardless of whether the amount was $3,600 or $4,600, the fact remains that the entire amount was disallowed and the resulting tax consequence would be the same.

(2) Appellants claimed a deduction for California sales tax paid in each of the years on appeal. The amounts of those deductions were not disallowed by the Internal Revenue Service, although in some years the itemized deductions claimed were replaced by the standard deduction, since after disallowance of improper deductions appellants received

a greater advantage by use of the standard deduction than they would have by itemizing. Appellants have given us no proof that they were entitled to any greater sales tax deductions than those which they claimed on their returns for each of the years in question.

(3) With respect to travel and lodging expenses allegedly incurred by Mr. Forbes while teaching away from Berkeley, the deduction of such expenses was disallowed by the Internal Revenue Service. From the information given us it is impossible to determine with any certainty which of the alleged expenses were allocable to any one taxable year. Nor have appellants submitted any records or other documentary evidence to prove that these claimed expenditures were proper deductions. Even if appellants had established that they were entitled to these deductions, the tax effect would be minimal. Generally, it appears that the standard deduction would still be more advantageous to appellants.

Upon review of the entire record we do not believe appellants have sustained their burden of proving either error in the federal determination or that they are entitled to deductions in addition to those allowed by the Internal Revenue Service. Under those circumstances we have no choice but to uphold respondent's assessments.

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,

Appeal of J. Morris and Leila G. Forbes

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 J. Morris and Leila G. Forbes against proposed assessments of additional personal income tax in the amounts of $25.26, $58.30, $87.80, and $29.00 for the years 1960, 1961, 1962, and 1963, respectively, and proposed penalties in the amounts of $8.82 and $11.66 for the years 1960 and 1961, respectively, be modified in that the proposed penalty in the amount of $11.66 for the year 1961 be cancelled in accordance with the stipulation of the Franchise Tax Board. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 7th day of August, 1967, by the State Board of Equalization,

Paul R. Leake, Chairm

, Member

, Member

, Member

, Member

ATTEST: , Secretary