

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MERLIN L. HARTDEGEN)

For Appellant: Merlin L. Hartdegen
in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Jack E. Gordon
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 protest of Merlin L. Hartdegen against a proposed assessment of additional personal income tax in the amount of \$73.84 for the year 1963.

The only question for decision is whether? for California personal income tax purposes, appellant is entitled to certain deductions comparable to those disallowed by the federal taxing authorities.

Appellant is employed as a railroad engineer. On his California personal income tax return for 1963 he claimed to be an unmarried head of a household, listing his daughter as a dependent. Accordingly, he deducted the \$3,000 personal exemption allowed in 1963 to a person qualifying as a head of household. In that return appellant also deducted \$1,200 for additional personal and dependent exemptions, and numerous itemized deductions.

Appellant's federal income tax return for 1963 contained similar deductions. Upon audit of that return the Internal Revenue Service determined that: (1) appellant

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was not entitled to claim head of household status because he failed to prove he furnished over half the cost of maintaining the household in which his daughter resided, and (2) appellant could not claim his daughter as a dependent because he failed to establish that he provided more than one-half of her support for the year. The Internal Revenue Service agent who performed the audit also made numerous adjustments to the itemized deductions claimed by appellant.

Based upon the federal revenue agent's report respondent issued a notice of proposed additional assessment against appellant for 1963. Appellant protested the assessment, but he did not reply to respondent's requests for additional information in support of his protest. Respondent therefore denied the protest, and that action gave rise to this appeal.

A deficiency assessment issued by respondent on the basis of a federal audit report, is presumed to be correct, and the burden is on the taxpayer to show that it is erroneous. (Appeal of Harry and Tessie Somers, Cal. St. Bd. of Equal., Mar. 25, 1968; Appeal of J. Morris and Leila G. Forbes, Cal. St. Bd. of Equal., Aug. 7, 1967; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.) That burden cannot be shifted to respondent by the taxpayer's mere assertion that the assessment is incorrect. (V.odd McColgan, 89 Cal. App. 2d 509 [201 P.2d 4143].)

In the instant case appellant has stated only that he is not satisfied with the action taken by respondent on his protest. Although he has been given ample opportunity to do so, appellant has offered no evidence in support of his position. We therefore have no choice but to sustain respondent's action in this matter.

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 Merlin L. Hartdegen against a proposed assessment of additional personal income tax in the amount of \$73.84 for the year 1963, be and the same is hereby sustained.

Rick Hood, Chairman
John W. Lynch, Member
Paul R. F. Jones, Member
_____, Member
Geoff Hurrey, Member

 _____, Secretary