BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
CHARLES K. HOLDEN)
)

    Appearances:

        For Appellant: Charles K. Holden, in pro. per.

        For Respondent: Peter   S.   Pierson
                               Counse 1

O P I N I O N

      This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Charles K. Holden for refund of personal income tax and interest in the total amount of $67.51 for the year 1963.

      The question presented is whether the Franchise Tax Board's assessment, based upon a federal audit report, should be upheld.

      Federal authorities determined that appellant had underreported his federal income tax for 1963 to the extent of $3,450.09 and issued an assessment in this amount. Specifically, the federal government concluded that there were (a) errors in the addition of contributions,, interest expens'e and itemized deductions; (b) unsubstantiated charitable contributions; (c) erroneously reported interest payments; and (d) errors in reported rental losses. Respondent made identical- adjustments to appellant's reported taxable income and issued a notice of proposed assessment on December 8, 1965, for additional tax of $54.83, plus interest.

      On December 14, 1965, appellant protested the proposed assessment. At the hearing before respondent's

hearing officer on May 24, 1966, appellant failed to establish that there was any error in the federal audit report and he produced ho evidence of any revised report showing a reduced. tax liability. Subsequently, respondent affirmed its assessment which became final on or about July 29, 1966. In the absence of any payment, respondent in February of 1968 served an order to withhold on appellant 's employer. The amount due was transmitted to respondent by the employer.

In this 'appeal, appellant has not 'furnished a federal revenue agent's report other than the one relied upon by respondent , nor presented any evidence to establish that the federal audit is erroneous. Obviously, therefore, appellant has not met the burden of establishing that respondent 's determination is either partially or totally erroneous. (Appeal of Jesse W. & Louella M. Frakes, Cal. St. Bd. of Equal., June 6, 1968; Appeal of Henrietta Swimmer, Cal. St. d. of Equal., Dec. 10, 1963; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.)

We do not believe that the numerous other contentions made by appellant have any merit. In summary, suffice it to say that the proposed assessment of additional tax was made within the limitation period set forth in section 18568.2 of the Revenue and Taxation Code; one or more notices of proposed assessment may be issued for a particular taxable year (Appeal of Louis Hozz & Ettie Hozz, Cal. St. Bd. of Equal., March 30, 1944; Appeal of J.H. Hoeppel, 1 . St. Bd. of Equal., Feb. 26, 1962); the tax liability in question was not affected by certain bankruptcy proceedings in view of the statutory provisions in effect when the bankruptcy case was closed (see Bankruptcy Act § 17, ch. 541, 30 Stat. 550 (1898) (Amended by 52 Stat. 851 (1938)), 11 U.S.C.A. § 35, subd.(a)); and no basis has been laid for any possible estoppel. A p p e l - lant also, refers to various provisions of the Code of Civil Procedure, but the arguments and citations have no relation to the matter at issue.

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,

<u>Appeal of Charles K. Holden</u>

        IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Charles K. Holden for refund of **personal** income tax and interest in the total amount of $67.51 for the year 1963 be and the same is hereby sustained.

        Done at Sacramento, California, this 6th day of January, 1970, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Secretary