

Appeal of Bennie and Mary Stabler

The issue for determination is whether appellants have met their burden of establishing that a federal determination relied upon by respondent in issuing the proposed assessment was erroneous.

The Internal Revenue Service audited appellants' 1974 federal income tax return and determined that a deficiency existed. The deficiency resulted from the disallowance of the following deductions: charitable contributions \$3,332; interest expense \$1,665; expenses for uniforms, equipment and tools \$1,176; and travel expense \$2,250. The federal action resulted in a deficiency of \$2,911 which appellants paid.

Subsequently, respondent issued a notice of **proposed assessment** for 1974 based upon the federal audit report. Appellants protested the **proposed assessment** stating that the federal adjustments had been revised, resulting in the refund of an overpayment. The revised federal audit report reflected the allowance of the following amounts of the deductions previously disallowed: charitable contributions \$3,215; interest expense \$376; and expenses for uniforms, equipment and tools \$140. The revised federal adjustments resulted in reducing appellants' federal tax liability by \$1,366. Since appellants had paid the first federal deficiency in full, the effect of the revised federal action was a refund to appellants of the \$1,366. Respondent **followed the revised federal action and increased the** amounts of the deductions allowed which resulted in the proposed assessment in controversy.

Appellants have offered no evidence which would indicate that the federal determination was incorrect. Appellants do argue, however, that since the **federal audit** adjustments resulted in a refund SO should the state adjustments.

The initial federal adjustment was paid by appellants. Therefore, the revised federal assessment which reduced the deficiency resulted in a refund to appellants. However, since appellants never paid any of respondent's initial proposed assessment, respondent's revised adjustments served to reduce the proposed assessment but did not result in a refund.

Section 18451 of the Revenue and Taxation Code provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a determination by the Franchise Tax Board based upon a federal audit is presumed to be correct and the burden is on

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the taxpayer to overcome that presumption. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 4143 (1949)]; Appeal of Willard D. and Esther J. Schoellerman, Cal. St. Bd. of Equal., Sept. 17, 1973; Appeal of Joseph B. and Cora Morris, Cal. St. Bd. of Equal., Dec. 13, 1971.) In this appeal appellants have offered no evidence to indicate that the federal action was erroneous. Therefore, we must conclude that appellants have failed to carry their burden and respondent's action 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,

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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 Bennie and Mary Stabler against a proposed assessment of additional personal income tax in the amount of \$420.54 for the year 1974, be and the same is hereby sustained,

Done at Sacramento, California, this 4th day of March , 1980, by the State Board of Equalization.

Daryl Olson , Chairman
Wesley H. Brownburg , Member
William W. Brown , Member
Robert A. Kuller , Member