

Appeal of James Lucas, Jr.

The issue for consideration is whether appellant has previously satisfied the proposed assessment.

Appellant timely filed his 1975 California income tax return as a head of household, showing self-assessed tax of \$854.00. After applying **\$607.00**, which had been withheld for state income tax purposes, and \$45.00 as renter's credit, appellant had an unpaid balance of self-assessed tax in the amount of **\$202.00**. He later paid such amount with interest in two installments of \$96.79 and \$123.45 on July 22, 1976, and October 4, **1976**, respectively.

Respondent audited appellant's return and disallowed appellant's head of household filing status. An assessment based thereon was proposed on August **26, 1977**. Appellant protested, but respondent, after due consideration, affirmed its proposed assessment. Appellant appealed.

Respondent's proposed assessment is presumed correct unless appellant can show wherein it is incorrect. In this regard, appellant must submit a detailed statement of facts and the grounds which form the basis of his appeal. (Appeal of Richard and Diane Bradley, Cal. St. Bd. of Equal., Dec. 6, 1977; Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976.)

Appellant contends that on December 6, 1977, he resolved this matter with one of respondent's representatives. Investigation of appellant's claim yielded the fact that on the date cited by appellant, he paid certain tax deficiencies for 1976 and 1977. The payments made were unconnected with the year 1975.

On July 15, 1978, appellant sent respondent copies of cancelled checks in the amounts of \$229.00 and \$123.45, contending that they evidenced payment of his 1975 tax. However, analysis of appellant's state income tax account shows that those checks were not in payment of respondent's proposed assessment for 1975. The \$229.00 payment made on May 26, 1976, was applied to appellant's 1973 self-assessed tax liability which was not paid with his return. The \$123.45 payment was one of the two payments made to satisfy appellant's self-assessed tax for 1975. (See above.) Moreover, this particular payment was paid in October 1976, which precedes **by nearly** a year the date on which respondent proposed the assessment at issue. (See above.)

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We therefore conclude that appellant has not shown he had satisfied the assessment proposed for the year 1975. Respondent's action in this matter was proper.

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 James Lucas, Jr., against a proposed assessment of additional personal income tax and penalty in the total amount of \$464.90 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of April, 1980, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member