

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ALLEN E. AND LUCY R. BARTZ)

For Appellants: Allen E. Bartz, in pro. per.

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

This **appeal is** made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Allen E. and Lucy R. Bartz against proposed assessments of additional personal income tax and negligence penalties in the total amounts of \$60.81, \$141.81 and \$96.81 for the years 1966, 1967 and 1968, respectively.

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The primary question for decision is whether respondent's proposed assessments of tax and penalty based upon federal audit adjustments were proper. A secondary issue concerns whether those assessments were barred by the statute of limitations.

Appellants filed joint federal and California income tax returns for the years 1966, 1967 and 1968. The Internal Revenue Service disallowed, for lack of substantiation, all of the itemized deductions claimed by appellants in each year, allowing the standard deduction instead. It also imposed a five percent negligence penalty for each year, due to the inadequacy of appellants' records. Upon receipt of the federal audit report, respondent made corresponding adjustments in appellants' reported taxable income for state income tax purposes. The resulting notices of proposed assessment of additional tax and negligence penalties were issued on June 10, 1970.

Appellants filed a timely protest against those proposed assessments, advising respondent that they were contesting the federal adjustments and requesting that further action on their protest be deferred pending a final federal determination. In the years following, respondent made numerous inquiries of appellants regarding the status of the federal protest. Appellants' repeated reply was that no final federal determination had been made. In response to a request for information issued by respondent in October 1978, appellants stated that they had "no knowledge of or received any of the above information." Thereafter, on January 17, 1979, respondent issued notices of action affirming its proposed assessments of tax and penalty for each year. That action gave rise to this appeal.

Section 18451 of the Revenue and Taxation Code provides, in part, 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 respondent based upon a federal audit, including the imposition of a negligence penalty, is presumed to be correct and the taxpayer bears the burden of proving it erroneous. (Todd v. Mc.Colgan, 89 Cal. App. 2d 509 [201 P.2d 4141 (1949)]; Appeal of Casper W. and Svea Smith, Cal; St. Bd. of Equal., April 5, 1976; Appeal of Elmer H. and Joan C. Thomassen, Cal. St. Bd. of Equal., Feb. 19, 1974.)

In the instant case, appellants have made no attempt to establish error in the federal determination or in respondent's assessments of tax and penalty based

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thereon. Their original appeal letter consisted of the following statement:

We kept records in compliance with the statute of limitations only and have no **knowl-
edge** of owing any such moneys 11-13 years ago.

- . Since appellants have offered nothing in support of their position, it is obvious they have failed to sustain their burden of proof.

In order to resolve whatever doubts appellants may have regarding the timeliness of the assessments here in question, we need only point out that the notices of proposed assessment of additional tax and penalty for the years 1966, 1967 and 1968 were all issued by respondent on June 10, 1970, well within the normal four-year period allowed for such action. (Rev. & Tax. Code, § 18586.) Accordingly, the assessments were not barred by the statute of limitations.

For the above reasons, we conclude that respondent's action in this matter must be sustained. .

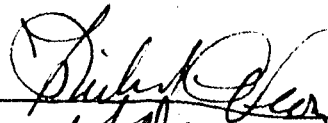
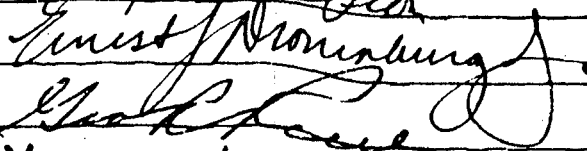
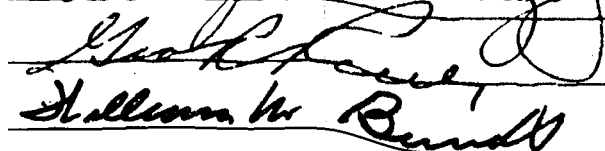
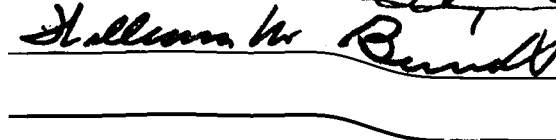
O R D E R

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 Allen E. and Lucy R. Bartz against proposed assessments of additional personal income tax and negligence penalties in the total amounts of \$60.81, \$141.81 and \$96.81 for the years 1966, 1967 and 1968, respectively, be and the same is hereby sustained.

Done at **Sacramento, California**, this 21st day
of May , 1980, by the State Board of Equalization.

	,	Chairman
	,	Member
	,	Member
	,	Member
_____	,	Member