



Appeal of William C. and Margaret E. Manes

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

Appellants' 1975 federal income tax return was audited by the Internal Revenue Service. As a result of the audit appellants' claimed sick pay exclusion was reduced from **\$5,200.00** to \$708.00 and their medical expense deduction was reduced from \$382.80 to \$248.04. These adjustments increased appellants' taxable income by **\$4,626.76**. After the adjustments, appellants' federal taxable income was **\$9,313.62**. Subsequently, respondent issued notices of proposed assessment based upon the federal audit report. These adjustments resulted in increasing appellants' taxable income for state purposes to **\$15,102.78**. Although appellants have advanced several arguments in opposition to respondent's determination, they have offered no evidence to indicate that the determination was incorrect.

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 the taxpayer to overcome that presumption.** (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414] (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.)

Appellants first argue that, contrary to the basis for respondent's application of the final federal determination, the federal and state laws are different as evidenced by the difference in their federal and state taxable income. It is true that there are some differences between the federal and the state personal income tax laws. However, the federal and state laws applicable to the adjustments at issue in this appeal--sick pay exclusion and medical expense deduction--are substantially identical. (Compare Rev. & Tax. Code, § 17138 with Int. Rev. Code of 1954, § 104; compare Rev. & Tax. Code, §§ 17253-17258 with Int. Rev. Code of 1954, § 213.)

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Next, appellants argue that the federal adjustments involved child care expenses which would not be applicable for state purposes because of differences in the law. However, since respondent made no adjustment for child care expenses and the federal audit report made no mention of child care expenses@ we can attach no significance to appellants' argument.

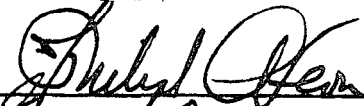
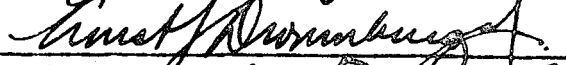

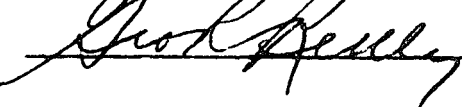
Finally, appellants contend that they were never advised of the specific nature of the adjustments. This is simply incorrect. On at least three occasions during the course of this appeal respondent informed appellant of the specific adjustments. In view of these explanations it was incumbent upon appellants to establish their entitlement to the sick pay exclusion and medical expense deductions claimed on their return for the appeal year. This appellants failed to do. Therefore, in accordance with section 18451 of the Revenue and Taxation Code, respondent's action in this appeal must be upheld.

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 William C. and Margaret E. Manes against a proposed assessment of additional personal income tax in the amount of \$206.09 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 30thday  
of June , 1980, by the State Board of Equalization.

  
\_\_\_\_\_, Chairman  
  
\_\_\_\_\_, Member  
  
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