

BEFORE THE STATE BOARD OF EQUALIZATION
 OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
)
 NATHAN AND CLAIRE F. **ENGELBERG**)

For Appellants: Nathan Engelberg, 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 Nathan and Claire F. Engelberg against a proposed assessment of additional personal income tax in the amount of \$642.03 for the year 1974.

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The sole question for decision is whether appellants have established error in **respondent's** deficiency assessment, which was based upon a federal audit report.

Appellants' 1974 federal income tax return was audited by the Internal Revenue Service, resulting in adjustments to several of the deductions claimed by appellants and a **\$12,098.00** increase in their taxable income. Appellants consented to those adjustments and to the additional tax assessed. Upon receipt of a copy of the federal audit report, respondent made corresponding adjustments to appellants' reported income for state income tax purposes and proposed the deficiency assessment here in question.

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 deficiency assessment issued by respondent **on the** basis of a federal audit is presumed to be correct, and the taxpayer bears the burden **of proving** that respondent's determination is incorrect. (Appeal of Excel and Veronica L. Hunter, Cal. St. Bd. of Equal., Dec. 11, 1979; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.) The **taxpayer cannot** merely assert the incorrectness of an assessment and thereby shift the burden to respondent to justify the tax **and** the correctness thereof. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414] (1949); Appeal of Samuel and Ruth Reisman, Cal. St.. Bd. of Equal., March 22, 1971.)

Appellants herein make no claim of error in the federal determination. Their only contention on appeal is that respondent's proposed assessment of additional state income tax is disproportionate to the amount of the federal deficiency, when the rates under the state and federal tax laws are compared. We find no merit in this contention. Our review of the record indicates that respondent's adjustments to appellants' reported taxable income for 1974 and its computation of their tax liability for that year were in complete conformity with the federal determination and with California law. Under the circumstances, we conclude that appellants have failed to carry their

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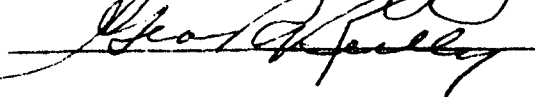
burden of showing error either in the federal determination or in respondent's assessment based thereon. Respondent's action in this matter therefore must be sustained.

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,

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 Nathan and Claire F. Engelberg against a proposed assessment of additional personal income tax in the amount of \$642.03 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of August, 1980, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member
_____, Member
_____, Member