



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GLENN KRISKE)

For Appellant: Glenn Kriske, in pro. per.

For Respondent: John A. Stilwell, Jr.
 Counsel

OPINION . .

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 Glenn Kriske against a proposed assessment of additional personal income tax in the amount of \$81.90 for the year 1973. Subsequent to the filing of this appeal, respondent conceded that the amount of the assessment should be reduced to \$70.88.

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The question presented is whether respondent's assessment, which is **based upon** a federal audit report, is proper.

Respondent received an audit report from the Internal Revenue Service ("IRS") which disclosed several changes to the taxable income as reported on **appellant's** federal income tax return for the year 1973. The IRS disallowed certain unsubstantiated deductions. Since appellant had claimed these deductions on his 1973 state return, respondent issued a proposed assessment applying the federal adjustments for state tax purposes.

At the protest level before respondent, appellant's representative indicated that the federal audit was being contested, and requested that further action on respondent's proposed assessment be held in abeyance until the final federal determination was issued. Respondent subsequently affirmed its proposed assessment when thereafter **there was no** reply to respondent's inquiries concerning the status of the federal appeal, and this timely appeal followed.

In the federal audit, in addition to disallowed unsubstantiated employee business expense deductions, certain itemized deductions were denied because the standard deduction was found by the IRS to **provide** a greater benefit to the appellant. Since the filing of this appeal, respondent found that for state tax purposes the allowable itemized deductions would provide the greater benefit. Therefore, respondent has now allowed them, resulting in the concession mentioned above.

During the course of this appeal, respondent was advised that appellant's federal appeal was denied as not timely filed, but that appellant would present the evidence he had submitted in that federal appeal. However, no evidence has been presented.

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 is **presumed** to be correct, and the taxpayer bears the burden of proving it erroneous. (Appeal of Allen E. and Lucy R. Bartz, Cal. St. Bd. of Equal., May 21, 1980; Appeal of Bennie and Mary Stabler, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Sam and Jeanne Chelner, Cal. St. Bd. of Equal., July 26, 1978.)

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In the instant case, appellant has offered no evidence to establish error in the federal determination or in respondent's action based thereon. Therefore, it is obvious that he has failed to satisfy his burden of proof. Respondent's action will therefore be sustained, subject to the adjustment noted in the first paragraph of this opinion.

ORDER

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 Glenn Kriske against a proposed assessment of additional personal income tax in the amount of **\$81.90** for the year 1973, be and the same is hereby modified in accordance with respondent's concession. In all other respects, respondent's action is sustained.

Done at Sacramento, California, this 18th day of November, **1980**, by the State Board of Equalization, with Members Nevins, Reilly, Dronenburg and Bennett present.

Richard Nevins _____, Chairman
George R. Reilly _____, Member
Ernest J. Dronenburg, Jr. _____, Member
William M. Bennett _____, Member
_____, Member