



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ROLANDO V. JIMENEZ)

Opinion on Petition for Rehearing

On April 8, 1980, we sustained the Franchise Tax Board's assessment of additional tax and penalties against **Rolando V. Jimenez** in the total amount of \$489.80 for the year 1977. Our decision at that time was predicated on Mr. **Jimenez's** failure to demonstrate that any part of respondent Franchise Tax Board's action was incorrect. Subsequently, however, Mr. Jimenez filed a timely petition for rehearing which contained evidence sufficient to establish some error in respondent's determination. Accordingly, as explained below, our original opinion and order in this case will be modified.

Appeal of Rolando V. Jimenez

First, appellant has established that he is entitled to dependent credits for his three **minor** children (aged 15, 14, and 9 during the year in question), who resided with appellant and his wife (their parents) during 1977. This is not a case where someone else has made an **inconsistent claim** to dependent credits for these children.

Second, **appellant** has shown that he **is entitled** to a withholding credit in the amount of \$190.60. The evidence appellant has presented indicates that respondent has taxed him on the community property earnings of his wife Leticia from the Community Hospital of San Diego. (Rev. & Tax. Code, § 18555, subd. (a).) That being so, respondent cannot deny him credit for the tax withheld **from** those earnings by the hospital. (See Rev. & Tax. Code, § 18551.1, subd. (a).)

Finally, appellant continues to argue that his liability- should be computed as if he and his wife had filed a joint return. They did not so file, however, and respondent was therefore entitled to treat appellant as a married person filing a separate return. Appellant did file a Form 540 which he and his wife both signed, but it was not a "return" because it did not contain the required financial information. (Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977,)

