

BEFORE THE STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)

ANTONIO AND LUCY VILLALOBOS)

For Appellant: Antonio Villalobos, in pro. per.

For Respondent: Vasio Gianulias

Counsel

O P I'N IO 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 Antonio and Lucy Villalobos against a proposed assessment of additional personal income tax in the amount of \$101.08 for the year 1976.

Appeal of Antonio and Lucy Villalobos

Appellants filed a timely 1976 California personal income tax return. Subsequently, respondent received a copy of a report of a federal adjustment from the Internal Revenue Service which showed that appellants had underreported their gross income on their 1976 return. Specifically, the report stated that appellants had failed to report \$11.00 in income from Harbor Hospital E.F.C.U., \$2,628.00 from the Los Angeles Unified School District, and \$30.00 from the United California Bank. When appellants did not reply to a request for an explanation of the discrepancy between the amount of income reported and the amount determined by the Internal Revenue Service, respondent issued a notice of proposed assessment of additional personal income tax.

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 (Appeal of Allen E. and Lucy R. Bartz, Cal. St. erroneous. 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.) Here the appellants have made no attempt to show error in respondent's determination. Instead, appellants have placed their reliance upon some "constitutional" objections to the proposed assessment which are frivolous and clearly without merit. (See <u>Appeal of Harry Sievert</u>, Cal. St. Bd. of Equal., April 8, 1980; <u>Appeal of Arthur W. Keech</u>, Cal. St. Bd. of Equal., July 26, 1977.) Since appellants have offered no evidence to-establish error, respondent's action must be sustained.

Appeal of Antonio and Lucy Villalobos

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 Antonio and Lucy Villalobos against a proposed assessment of additional personal income tax in the amount of \$101.08 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this $30 \, th \, day$ of March. , 1981, by the State Board of Equalization, with Members Dronenburg, Bennett and Nevins present.

Ernest J. Dronenburg,	Jr.	. Chairman
William M. Bennett		. Member
Richard Nevins		Member
		Member
		, Member