



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 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.) 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 Appeal of Harry Sievert, Cal. St. Bd. of Equal., April 8, 1980; Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) Since appellants have offered no evidence to establish error, respondent's action must be sustained.

