



BEFORE THE STATE BOARD OF EQUALIZATION
 OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 ROBERT AND BONNIE ABNEY)

For Appellants: Christie L. Fraser
 Attorney at Law

For Respondent: Allen R. Wildermuth
 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 Robert and Bonnie Abney against proposed assessments of additional personal income tax and penalties in the total amounts of \$67.14, \$490.52, \$349.50, and \$146.09 for the years 1972, 1974, 1975, and 1976, respectively.

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The sole issue presented by this appeal is whether appellants have established error in respondent's proposed assessments of additional personal income tax or in the penalties assessed for the years in issue.

The subject matter of this appeal arises, in **part, out of** the same series of events and **circumstances** which gave rise to appellants' protest of a federal deficiency determination for **1974**. (See **Robert D. Abney**, ¶ 80,027 P-H Memo. T.C. (1980).) **The rendition of these** events and circumstances is herein incorporated by reference. Additional data relating to the instant appeal is set forth below.

In 1979, appellants were issued a proposed assessment reflecting respondent's determination that they were not entitled to a charitable contribution deduction for the year 1974 in the amount of \$8,366. The subsequent year, respondent notified appellants that it had no record that they had filed a return for 1972; a proposed assessment, based upon a federal audit report, was concurrently issued. Appellants protested the proposed assessments, and notified respondent that their federal returns for 1972 and 1974 were the subject of proceedings before the United States Tax Court. The court's decision for appellants' 1972 taxable year was apparently based upon a stipulated agreement between appellants and the federal authorities; its opinion with regard to their 1974 taxable year is cited above. The **subject** proposed assessments for 1972 and 1974, which reflect certain revisions resulting from the aforementioned court decisions, were subsequently issued by respondent. The proposed assessment for 1974 includes **a five percent negligence penalty**. The proposed assessments for 1975 and 1976 are based upon information contained in a federal audit report disclosing that appellants had additional business income of \$3,026 and **\$1,261** for the years in issue, respectively.

Appellants contend that respondent's proposed assessments are in error, and that they should be allowed a deduction for each of the appeal years for amounts they claimed as charitable **contributions** to the Universal Life Church. Appellants evidently assert that **they** donated their entire income to their "chapter" of that church, the "Dignity of Man Church", in 1972 and 1974, and that they donated 20 percent of their income for the years 1975 and 1976 to the Universal Life Church, Inc.

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In Robert D. Abney, supra, the United States Tax Court dealt with virtually the same contention now advanced by appellants in the instant appeal, and reached a decision adverse to appellants for the year 1974. The disposition of appellant's case on the federal level is highly persuasive of the result which should be reached in this appeal. (Appeal of Dorothy C. Thorpe Glass Mfg. Corp., Cal. St. Bd. of Equal., Sept. 17, 1973; Appeal of Estate of Adam Holzwarth; Deceased, and Mary Holzwarth, Cal. St. Bd. of Equal., Dec. 12, 1967.) In reaching its decision, the tax court found that appellants had "failed to show that they made any transfer of money or property into the name of either the 'Dignity of Man Church' or the 'Universal Life Church, Inc.' in 1974." (Robert D. Abney, supra, ¶ 80,027 P-H Memo. T.C., at 146-80.) For this reason alone, the court concluded, appellants were not entitled to their claimed charitable deduction. The court also held that appellants had failed to prove that the "Dignity of Man Church" was operated exclusively for religious purposes or that it was a "chapter" of a recognized tax exempt organization. There is no evidence in the record of this appeal to suggest that the tax court's decision was incorrect in any respect.

Appellants have made no attempt to substantiate the claimed charitable contributions, and their disallowance must therefore be sustained. (See Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977; Appeal of Dennis G. Davis, Cal. St. Bd. of Equal., Oct. 6, 1976.) Appellants have also failed to establish as erroneous respondent's imposition of the negligence penalty for 1974; consequently, it too must be sustained. (Appeal of P. R. Kuhl, Cal. St. Bd. of Equal., Dec. 10, 1981.)

As previously indicated, the subject proposed assessments for 1975 and 1976 reflect respondent's determination, based upon a federal audit report, that appellants had additional business income of \$3,026 and \$1,261, respectively, for the years under discussion. A deficiency assessment based on a federal audit report is presumptively correct (see Rev. & Tax. Code, § 18451), and the taxpayer bears the burden of proving that respondent's determination is erroneous. (Appeal of Donald G. and Fanceen Webb, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.) No such proof has been presented here. Consequently, we must conclude that appellants have failed to carry their burden of proof and that respondent's determinations of deficiency based upon the

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federal audit report be sustained. The presumption of correctness which attaches to respondent's determinations under these circumstances also applies with respect to the imposition of the five percent negligence penalty imposed under section 18684 of the Revenue and Taxation Code. (Appeal of Casper W. and Svea Smith, Cal. St. Bd. of Equal., April 5, 1976; Appeal of Robert R. Ramlose, Cal. St. Bd. of Equal., Dec. 7, 1970.)

For the reasons set forth above, respondent's action in this matter will be sustained.

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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 Robert and Bonnie Abney against proposed assessments of additional personal income tax and penalties in the total amounts of \$67.14, \$490.52, \$349.50, and \$146.09 for the years 1972, 1974, 1975, and 1976, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg, and Mr. Nevins present.

William M. Bennett. , C h a i r m a n
-Ernest J. Dronenburg, Jr. , Member
Richard Nevins , Member
_____ , Member
_____ , Member