

Appeal of Robert B. and Patricia Silver

The sole issue is whether appellants have established error in respondent's proposed assessments.

During 1974 and 1975, both appellants resided in Los Altos, California. They owned rental properties in Los Altos, in Banning, California, and in Hawaii, and were partners with others in a Los Altos art gallery. Robert Silver did repair work on the Los Altos and Hawaii rental properties and assisted Patricia Silver with the operation of the art gallery. Robert Silver was also employed by Eastern Airlines as a full-time pilot based in New York City.

On both their California and their federal joint income tax returns, appellants took deductions for Robert Silver's transportation, meal, and lodging expenses incurred while he was traveling from his Los Altos residence to his New York City place of work and to appellants' Hawaii rental property, and his meal and lodging expenses while he was in New York and Hawaii.

As the result of an audit, the Internal Revenue Service disallowed those deductions. Respondent issued its notices of proposed assessment based upon that audit report. Appellants protested the proposed assessment and indicated that they were also challenging the federal adjustments. Eventually, the Commissioner of Internal Revenue and the appellants reached a settlement in which the claimed deductions were partially allowed in specifically agreed-upon amounts for each year at issue. A written Internal Revenue Service District Counsel Decision set forth the Service's bases for concurring in the appellants' settlement offer to the Service. Those bases were that New York City was Robert Silver's place of business for business expense purposes so he was not entitled to a deduction for meals and lodging while there, that he traveled to California for mixed business and personal reasons so he would be entitled to deduct some portion of his travel expenses to and from California, and that his trips to Hawaii were solely business trips so he was entitled to deduct all of his expenses in traveling to and from Hawaii and staying there.

A deficiency assessment issued by respondent on the basis of a federal audit report is presumed to be correct as to issues of fact, and the burden is on the taxpayer to prove respondent's determination is in error. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 4141 (1949)]; Appeal of Jackson Appliance, Inc., Cal. St. Bd. of Equal., Nov. 6, 1970; Appeal of Western Orbis Company, Cal. St. Bd.

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of Equal., Aug. 1, 1974.) These principles certainly apply where the final federal action resulted from a settlement agreement which the taxpayers made with the Internal Revenue Service. (Appeal of Robert E. and Argentina Sorenson, Cal. St. Bd. of Equal., January 6, 1981.)

Appellants have presented no evidence here which controverts the conclusions upon which the federal settlement was based.

After receiving a copy of the IRS decision setting forth its conclusions supporting the federal settlement, respondent determined that its proposed assessment for 1974 and 1975 should be reduced to \$409.78 and **\$212.53**, respectively, to fully align its assessments with the federal settlement terms. Accordingly, we sustain respondent's assessments in the revised, lowered amounts now recommended by respondent.

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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 Robert B. and Patricia Silver against proposed assessments of additional personal income tax in the amounts of \$446.17 and **\$218.25**, for the years 1974 and 1975, respectively, be and the same is hereby modified to reflect the reduced amounts now recommended by respondent. In all other regards, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 14th day of October , 1982, by the State Board of Equalization, with Board Members **Mr. Bennett**, **Mr. Collis**, **Mr. Dronenburg** and Mr. Nevins present.

William M. Bennett., Chairman
Conway-H: Collis, Member
Ernest-J; Dronenburg; Jr., Member
Richard Nevins, Member
_____, Member