



**BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA**

**In the Matter of the Appeal of)
LARUE AND ALICE HARCOURT)**

**For Appellants: Robert E. Hales
Attorney at Law**

**For Respondent: James C. Stewart
Counsel**

OP 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 Larue and Alice Harcourt against a proposed assessment of additional personal income tax in the amount of \$2,177.60 for the year 1976.

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Appellants filed a 1976 joint personal income tax return on April 12, 1977, which reported items of income and expense for both 1975 and 1976. Upon audit, respondent made many adjustments for various reasons, e.g., a carryover loss not allowable under California income tax law was disallowed, a loss on stock transferred to the former Mrs. Harcourt as part of a property settlement was disallowed as a personal expense, a gain reportable in a prior year was eliminated, various partnership losses for which no partnership returns were filed were disallowed, and, various expenses were disallowed for lack of substantiation. As a result of these adjustments, respondent determined appellants' taxable income for 1976 to have been \$40,925 and issued a notice of proposed assessment for 1976 based on that amount. Appellants protested.

During the protest, respondent completed schedules itemizing the difference between the amounts claimed on the return and the amounts respondent had used for computing the proposed assessment. After a return for one partnership had been filed, respondent allowed a claimed loss with respect to that partnership and also allowed a portion of the claimed employee entertainment expense and allowed an additional amount of claimed car expenses. These adjustments reduced appellants' computed taxable income from \$40,925 to \$36,160. Respondent revised and affirmed its proposed assessment in accordance with that reduction. This appeal followed.

Appellants challenge respondent's determination on two bases: (1) appellants' records do not agree with the \$36,160 of taxable income as determined by respondent and (2) the statute of limitations had run before respondent issued the assessment for 1976.

It is well settled that respondent's determinations are presumptively correct, and that the taxpayer bears the burden of proving them erroneous. (Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977; Appeal of Sarkis N. Shmavonian, Cal. St. Bd. of Equal., April 6, 1977.) Appellants have failed to offer any evidence which would tend to refute respondent's determination. Accordingly, unless the statute of limitations bars respondent's determination, the determination must be upheld.

Section 18586 of the Revenue and Taxation Code, which contains the basic statute of limitations, provides that every notice of a proposed deficiency assessment shall be mailed within four years after the return was filed. Appellants' return, which was actually filed on April 12, 1977, was deemed to have been filed on April 15, 1977, the last day on which a 1976 calendar year taxpayer could file a timely return. (Rev. & Tax. Code, §§ 18432 and 18588.) The last date on which a timely notice of proposed assessment for 1976 could have been mailed was April 15, 1981. Since respondent's notice

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was mailed on January 16, 1981, it was timely. The fact that the notice of action on the proposed assessment was not issued until September 30, 1981, is irrelevant. (Appeal of Edward L. Martin, Cal. St. Bd. of Equal., June 23, 1981.) For the reasons set forth above, respondent's action must 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 LaRue and Alice Harcourt against a proposed assessment of additional personal income tax in the amount of \$2,177.60 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of December , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member

_____, Member