

BEFORE THE STATE BOARD OF EQUALIZATION
OF ~~THE~~ STATE OF CALIFORNIA

In the Matter of the Appeal of)
WING EDWIN LEW)

Appearances:

For Appellant: Wing Edwin Lew,
in pro. per.

For Respondent: John A. Stilwell, Jr.
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 Wing Edwin Lew against proposed assessments of additional personal income tax and penalties in the amounts and for the years as follows:

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<u>Year</u>	<u>Tax</u>	<u>Penalties</u>
1975	\$467.56	\$140.26
1976	459.32	137.79
1977	262.10	78.63
1975	\$110.00	\$33.00
1976	110.00	33.00

The issues to be decided are (1) whether appellant has established any error in **respondent's** proposed assessments of tax and penalties, and (2) whether respondent properly disallowed the standard deduction with respect to 1975 and 1976.

In a review of its records for 1975, 1976, and 1977, respondent was unable to locate returns filed by appellant for those years. Respondent requested proof that appellant had filed or was not required to do so. Respondent also requested salary information from appellant's employer, the California Department of Transportation. Copies of appellant's Forms W-2 **were** provided, indicating that appellant had received 'salary income in the amounts of **\$17,493.72, \$17,690.00, and \$15,495.00** for 1975, 1976, and 1977, respectively. Respondent issued notices of proposed assessment against appellant for those years, determining his tax liability from the amount;; of income reported on the Forms W-2 and allowing appellant the **standard** deduction for each year. Respondent also imposed a 5 percent penalty for negligence and a 25 percent penalty for failure to file.

At the protest level appellant stated his disagreement with respondent's proposed assessments, but presented nothing substantive in support of his position. Appellant did make reference to a purported examination of his employer's records concerning revised Forms W-2 for the years at issue, but no substantiation of such claim was provided. Appellant made the additional statement that his wife had reported itemized deductions on her separately filed returns for 1975, 1976, and 1977. After due consideration of the above evidence, respondent affirmed its proposed assessments, resulting in this appeal.

As a result of appellant's statement that his wife had filed separately and itemized her deductions, respondent issued notices of proposed assessment disallowing the standard deduction for' 1975 and 1976. Appellant's protest to these latter actions consisted of a repeat of his general disagreement with all of respondent's actions. Therefore, respondent affirmed its disallowance of the standard deduction for 1975 and 1976, after which action appellant appealed.

It is settled law that respondent's determinations of tax and penalties are presumptively correct, and that the taxpayer, bears the burden of proving them erroneous. (Appeal of Mitchell B. Valentine,

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Cal. St. Bd. of Equal., March 30, 1981; 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, also see Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.)

Appellant's attempt to sustain such burden consists of an unsupported contention that the W-2 information on which respondent based its proposed assessments is somehow under review. Nothing in the record substantiates that such is the case. Appellant has not **even** made an argument in opposition to the disallowance of the standard deduction, but even if he did, section 17172, subdivision (a) of the Revenue and Taxation Code disposes of the matter by prohibiting an individual from being allowed the standard deduction where **his** spouse has filed separately and determined her tax **liability** utilizing itemized deductions.

On the basis of the foregoing, we must conclude that appellant has provided insufficient information to establish the merit of his' position. He has consequently failed to carry his burden of proving respondent's proposed assessments erroneous, and such proposed assessments must therefore be upheld.

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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 Wing Edwin Lew against proposed assessments of additional personal income tax and **penalties** in the amounts and for the years as follows, be and the same is hereby sustained.

<u>Year</u>	<u>Tax</u>	<u>Penalties</u>
1975	\$467.56.	\$140.26
1976	459.32	137.79
1977	262.10	78.63
1975	\$110.00	\$33.00
1976	\$110.00	33.00

Done at Sacramento, California this 1st day of February , 1983; by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

<u>William M. Bennett</u>	Chairman
<u>Conway H. Collis</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	Member
<u>Richard Nevins</u>	Member
<u></u>	, Member