

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of )  
KENNETH W. AND **SHIRLEY** A. PETERS )

For Appellants: Kenneth W. Peters,  
in pro. per.

For Respondent: Terry Collins  
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 Kenneth W. and Shirley A. Peters against a proposed assessment of additional personal income tax in the amount of \$176.30 for the year 1978.

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The sole issue for determination is whether appellants have shown that respondent's reliance on a federal audit report in issuing a proposed assessment of tax is erroneous.

Appellants\* 1978 federal income tax return was audited by the Internal Revenue Service. Following the federal audit, respondent received a copy of the federal audit report, as authorized by section 6103(d) of the Internal Revenue Code. **The audit increased** appellants' federal taxable income by **\$2,740.00<sup>1</sup>** because of a disallowance of deductions claimed for "contributions," "uniform, equipment and tools," "rental expenses" and "rental depreciation." Respondent adopted the federal adjustments for state tax purposes and issued a Notice of Additional Tax Proposed to be Assessed. As a result, appellants' state tax liability was increased by \$176.20, the amount under appeal.

Appellants filed a timely protest claiming that a second federal audit had resulted in a **small refund**. Respondent requested a copy of the second report which was never received. Respondent, in a letter to appellants dated November 19, 1981, informed appellants that for federal purposes the audit resulted in a small refund because the corrected tax liability **was exceeded** by prior tax payments. However, respondent noted that the federal refund in no manner indicated that the increase in taxable income was inappropriate. Appellants never responded to this letter.

Under the provisions of Revenue and Taxation Code section 18451, a taxpayer is required to concede the accuracy of a federal audit determination or state wherein it is erroneous. We have consistently held that respondent's determination of a deficiency based upon a federal audit report is presumed to be correct, and the burden is on the taxpayer to establish that it is erroneous. (Appeal of Helen G. Gessele, Cal. St. Bd. of Equal., **April 8, 1980.**)

Appellants have not met their burden of proof in this regard. They have failed to demonstrate where the federal audit report is erroneous and have not

1/ The mathematically correct total is \$2,748.00. For purposes of this appeal the \$2,740.00 figure was used.

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submitted any evidence indicating that the increase in the amount of taxable income for the year in question was incorrect. As such, we agree with respondent that appellants have failed to rebut the presumption that its determination of a deficiency is correct.

For the reason stated above, we must sustain respondent's determination of a deficiency in this **matter.**

