



Appeal of Lucy Cabieles

The issue in this matter is whether appellant has shown respondent's proposed assessment based upon a federal audit to be erroneous.

Appellant is a self-employed dentist who practices and resides in Carson, California. Under authorization of section 6103(d) of the Internal Revenue Code, respondent received a copy of an audit report from the Internal Revenue Service adjusting appellant's federal return for 1976. **The federal report** indicated that as a result of certain disallowances, appellant's federal taxable income was being increased from \$9,213 to \$15,217, a difference of \$6,004. This resulted in the imposition of an additional federal income tax of \$585 **over** the amount of tax shown on appellant's original federal return. The report also noted the imposition of an additional penalty of \$29 for negligence.

Based on the federal audit report, respondent increased appellant's 1976 California taxable income by \$6,004 and also imposed a corresponding negligence penalty. This resulted in additional state **income** tax of \$605.06 and a penalty of \$30.25. These adjustments were reflected in a Notice of Additional Tax Proposed to be Assessed (NPA) issued on January 24, 1980. Respondent's subsequent affirmance of the NPA by the issuance of a Notice of Action on October 7, 1980, led to this **appeal**.

Revenue and Taxation Code section 18451 provides that, where federal adjustments are made to a taxpayer's federal income tax return, the taxpayer is obligated to concede the accuracy of such adjustments or state wherein they are erroneous. Furthermore, respondent's determination of a deficiency based upon a federal audit is presumed to be correct, and the burden **is** upon the taxpayer to establish that it is erroneous. (Appeal of Helen G. Gessele, Cal. St. Bd. of Equal., April 8, 1980.) The same presumption applies with respect to a corresponding imposition of a negligence penalty. (Appeal of Casper W. and Svea Smith, Cal. St. Bd. of Equal., April 5, 1976.)

Appellant's first objection to the proposed deficiency at issue in this appeal is based on a **belief** that respondent arrived at the \$605.06 figure merely by "copying" the \$585 income tax deficiency determined at the federal level. In appellant's view, the California deficiency is incorrect for not having been determined pursuant to this state's own taxation law. Appellant's beliefs are without basis.

Appeal of Lucy Cabieles

Appellant has apparently been misled by the similarity in amount between the respective federal and state income tax deficiencies. It is pure coincidence that the figures are close to each other, since very different factors were involved in the respective determinations. With respect to appellant's federal income tax liability, substantial tax credits, in the total amount of **\$4,214.00**, reduced such liability from **\$4,799.00** to \$585, the amount of the federal deficiency. However, no similar tax credits were applicable in regard to appellant's California income tax liability. When her previously reported California taxable income was increased by the above-noted \$6,004, her California income tax liability increased by the \$605.06 forming the principal subject of this appeal. Respondent's calculation of that amount was based entirely on California law, not federal law, and we find no error in that calculation.

We also briefly note and reject two additional claims made by appellant. First, appellant at one time contended that the federal matter on which respondent's action was based was still being contested. However, she did not come forward with any proof to substantiate that claim. Second, appellant claimed that she received only respondent's October 7, 1980, Notice of Action: that is, that she did not receive respondent's January 24, 1980, NPA. However, the record indicates that appellant protested the NPA, by letter, on **March** 23, 1980, and that respondent replied on May 16, 1980.

On the basis of the foregoing, we **must** conclude that appellant has failed to carry her burden of showing error in respondent's proposed assessment. We have rejected her contentions with regard to the proposed assessment of tax and she has not contested the propriety of the negligence penalty. Under these circumstances, the assessment of tax and penalty **must** be upheld.

Appeal of Lucy Cabieles

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 Lucy Cabieles against a proposed assessment of additional personal income tax and penalty in the total amount of **\$635.31** for the year **1976**, be and the same is hereby sustained.

Done at Sacramento, California, this **28th** day of **July**, **1983**, by the State Board of Equalization, with Board **Members Mr. Bennett**, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett \_\_\_\_\_, Chairman  
Conway H. Collis - - - -, Member  
Ernest J. Dronenburg, Jr. - - -, Member  
Richard Nevins \_\_\_\_\_, Member  
Walter Harvey\* \_\_\_\_\_, Member

\*For Kenneth **Cory**, per Government Code section 7.9