



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
FRANK AND BARBARA COTTER )

For Appellant: Frank Cotter,  
in pro. per.

For Respondent: Elleene A. Kirkland  
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 Frank and Barbara Cotter against a proposed assessment of additional personal income tax in the amount of \$694.36 for the year 1978.

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The issue for determination is whether respondent's proposed assessment is barred by the statute of limitations.

Appellants Frank and Barbara Cotter timely filed a 1978 joint personal income tax return on April 15, 1979. On March 27, 1981, respondent received a federal audit report which added \$11,730 in **1978 partnership** income to that reported by appellants. This **additional** income also resulted in a \$352 decrease in appellants' **deductible medical** expenses. On August 26, **1981**, respondent issued a proposed assessment which reflected the federal audit adjustments to the extent applicable under the California Revenue and Taxation Code. Respondent's denial of appellants' protest gave rise to this appeal, wherein they contend that the proposed assessment was based on partnership **income** from **1969** and that the statute of limitations has run as to that year.

Revenue and Taxation Code section 18451 provides that if a federal adjustment or correction is made in a taxpayer's tax liability, then the taxpayer shall report the adjustment to the Franchise Tax Board within ninety days after the final federal determination and "shall concede the accuracy of such determination or state wherein it is erroneous." It is **well settled** that a proposed deficiency assessment by the Franchise Tax Board based upon federal action is presumed to be correct and the burden is upon the taxpayer to overcome that presumption. (Todd v. McColgan, 89 Cal.App.2d 509, 514 [201 P.2d 414] (1949); Appeal of Robert J. and Evelyn A. Johnston, Cal. St. Bd. of Equal., April 22, 1975; Appeal of Edwin R. and Joyce E. Breitman, Cal. St. Bd. of Equal., March 18, 1975.) **Appellants** have failed to present any evidence to show that either the federal adjustment was incorrect, the partnership income was not earned in 1978, or respondent's proposed assessment was otherwise erroneous. On the contrary, the record clearly demonstrates that the proposed assessment was based upon a federal audit report which adjusted partnership income earned in 1978.

In addition, respondent's action was well within the statute of limitations. Revenue and Taxation Code section 18586 provides that, with certain exceptions, no **deficiency** shall be assessed on a taxpayer's return unless respondent mails its notice of proposed assessment within four years after the return is filed. Respondent issued its notice less than **2-1/2** years after appellants filed their return. Furthermore, section

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18586.2 provides that where, as here, a taxpayer fails to inform respondent of a federal income tax adjustment, respondent must issue its notice within four years after the date of the final federal adjustment. Respondent in this case notified appellant less than half a year after the final federal determination.

For the foregoing reasons, we will sustain respondent's action.

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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 Frank and Barbara Cotter against a proposed assessment of additional personal income tax in the amount of \$694.36 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of August 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