



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MELVIN R. BOWERS)

For Appellant: Melvin R. Bowers,
in pro. per.

For Respondent: Lazaro L. Bobiles
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 Melvin R. Bowers against a proposed assessment of additional personal income tax in the amount of \$1,291.61 for the year 1977.

Appeal of Melvin R. Bowers

The Internal Revenue Service audited appellant's 1977 federal tax return and made certain adjustments which increased his taxable income by \$13,781. Respondent received a copy of the final audit report **and determined** that the adjustments were applicable to appellant's California tax return. It issued a notice of proposed assessment **reflecting** this determination. Appellant protested. At that time, respondent determined that a flow-through adjustment of \$450 made by the Internal Revenue Service was not applicable for California purpose; since such adjustment concerned a loss from **Mara Aviation**, a subchapter S corporation, and accordingly adjusted its determination. However, respondent reaffirmed the remaining adjustments, and its denial of appellant's protest led to this appeal.

A determination by respondent which is based upon a federal audit, is presumed correct. (Appeal of Herman D. and Russell Mae Jones, Cal. St. Bd. of Equal., April 10, 1979.) The taxpayer must either concede that the federal audit is correct or bear the burden of proving that it is incorrect. (Rev. & Tax. Code, § 18451.) Appellant **has** produced no evidence with respect to the contested items. Instead, he merely contends that a "large **percentage**" of the federal adjustments was for a subchapter S corporation and that these adjustments would not affect his California tax liability. As indicated, appellant has offered no evidence proving that any of the contested adjustments are related to any subchapter S corporation. Indeed, appellant's 1977 personal income tax return indicates that the subject adjustments involved his sole proprietorship and not any subchapter's corporation. This board has **frequently held** that a taxpayer's unsupported assertion is not sufficient to prove **that** a federal audit is incorrect. (Appeal of Arthur G. and Rogelia V. McCaw, Cal. St. Bd. of Equal., March 3, 1982; Appeal of Robert C. Sherwood, Deceased, and Irene Sherwood, Cal. St. Bd. of Equal., Nov. 30, 1965.) Since appellant has not met his burden of proof, respondent's action must be sustained.

Appeal of Melvin R. Bowers

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 Melvin R. Bowers against a proposed assessment of additional personal income tax in the amount of **\$1,291.61** for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of September, 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