



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
T. K. AND MARALIND JOHNSON)

For Appellant: T. K. Johnson,
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 T. K. and Maralind Johnson against a proposed assessment of additional personal income tax in the amount of \$94.36 for the year 1977.

Appeal of T. K. and Maralind Johnson

The issues for determination are: (1) whether appellants have established error in respondent's proposed assessment of personal income tax for the year at issue based upon the findings of a federal audit report; (2) whether appellants were entitled to a moving expense deduction during this year; and (3) whether appellants were entitled to the special low income tax credit.

Appellants moved to California from Pennsylvania in November of 1977. Appellants timely filed a 1977 California personal income tax form but mistakenly used the form for full-year residents (Form 540) rather than the form for part-year residents (Form 540 NR). Upon audit of their 1977 federal income tax return, the Internal Revenue Service disallowed certain claimed adjustments to gross income. Upon receipt of a copy of the federal audit report, respondent determined that certain of those adjustments (i.e., employee business expense, charitable contribution, sale of residence) were, **applicable to** appellants' California tax return. In addition, respondent determined that appellants were not entitled to a deduction for moving expenses pursuant to Revenue and Taxation Code section 17266, subdivision (d), or to a special tax credit for low income taxpayers pursuant to **Revenue and** Taxation Code section 17069, subdivision (e). Appellants protested the resulting assessment but failed to provide any substantiation in support of that protest. Accordingly, respondent affirmed the proposed assessment; thereafter this appeal arose;

A deficiency assessment based upon a federal audit report **is presumptively** correct (see Rev. & Tax. Code, § 18451), and the **taxpayer bears** the burden of proving that **respondent's determination** is erroneous. (Appeal of Donald G. and Franceen Webb, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.) Appellants have produced no evidence to show that the **federal audit** is erroneous. **However,** it appears that respondent's adjustment to charitable contributions amounting to \$26 is in error. Appellants claimed charitable contributions of \$1,498 on their federal return. The final federal action allowed \$11472 of **this amount and disallowed** \$26. On their California return, appellants claimed only \$765 for charitable contributions. Nevertheless, respondent disallowed \$26. In view of the fact that appellants have verified \$1,472 of their contributions to the satisfaction of the Internal Revenue Service, it is improper for respondent to disallow \$26 when appellants claimed only \$795 in charitable contributions on their state return.

Appeal of T. K. and Maralind Johnson

'To this extent,, respondent's action **must be** modified. Since appellants have not otherwise **met their** burden of proof, respondent's action with respect to the remaining federal adjustments must be sustained. (Appeal of George C. Broderick, Cal. St. Bd. of Equal., Sept. 21, 1982.)

Respondent's denial of the moving expense deduction was pursuant to section 17266, subdivision (d), of the Revenue and Taxation Code, which provides, in relevant part:

In the case of an individual whose former residence was outside this state-and his new place of residence is located within this state . . . the deduction allowed by this section **shall** be allowed only if any amount received as payment for or reimbursement of expenses of moving 'from one residence to another residence is includable in gross income as provided by Section 17122.5 and the amount of deduction shall be limited only to the amount of such payment or reimbursement or the amounts specified in subdivision (b), whichever amount is the lesser.

Since appellants received no reimbursement from an employer for their moving expenses 'and' their move was from out-of-state into California, section 17266 clearly applies, and prohibits a deduction for moving expenses. (See Appeal of Sundaram and Hemavathy Subramanian, Cal. St. Bd. of Equal., Feb. 1, 1982.)

Lastly, Revenue and Taxation Code section **17069**, subdivision (e), provides **that the special** low income tax credit of \$80 does not apply to a married couple filing a joint **return whose** total income exceeds \$20,000. For the purposes of this section, such gross income of a nonresident means gross income from sources both within and *without the state. (Rev. & Tax. Code, § 17069, subd. (h).) As appellants were nonresidents of California for part of the year at issue; and as the record establishes that appellants' gross income from sources both within and without this state exceeded \$30,000, section 17069, subdivision (e), **clearly applies** to disallow the claimed credit.

For the foregoing reasons, respondent's action, as modified, must be, sustained.

