



\*74-SBE-010\*

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
CURTIS W. LINT )

For Appellant: Curtis W. Lint,  
in pro. per.

For Respondent: Crawford H. Thomas  
Chief Counsel

Noel J. Robinson  
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Curtis W. Lint against a proposed assessment of additional personal income tax and penalties in the total amount of **\$15,562.96** for the year 1969.

The sole issue presented by this appeal is whether the Franchise Tax Board properly assessed additional personal income tax and penalties against appellant for the taxable year 1969.

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On November 30, 1970, appellant was convicted in the Orange County Superior Court on two counts of grand theft, both arising out of a misappropriation of **\$138,000.00** in cash from a third party in 1969. As a result of the conviction appellant was placed on probation.

On April 12, 1971, after determining that appellant had not reported the misappropriated sum on his 1969 federal income tax return, the Internal Revenue Service adjusted appellant's 1969 income to include this amount. It also assessed a 5 percent negligence penalty **against appellant** for failure to report the misappropriated sum as income.

In February 1972, respondent's auditors conferred with appellant and supplied him with the appropriate tax forms to enable him to file a 1969 California personal income tax return. Then, on March 20, 1972, appellant's probation was revoked and he was imprisoned. Upon the occurrence of that event respondent issued a proposed assessment against appellant based upon the federal audit adjustment. The assessment included a 5 percent negligence penalty under section 18684 of the Revenue and Taxation Code and an additional penalty under section 18681 for failure to file a 1969 return.

On the issue of whether respondent properly assessed additional personal income tax and penalties against appellant for 1969, appellant first argues that it **was wrong** for respondent to base its deficiency assessment upon the gross income figures appearing in the federal audit report. We have held many times, however, that a deficiency assessment based upon a federal audit report is presumed to be correct, and the burden is upon the taxpayer to establish that it is **erroneous.** (Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959; Appeal of Henrietta Swimmer, Cal. St. Bd. of Equal., Dec. 10, 1963; Appeal of Samuel and Ruth Reisman, Cal. St. Bd. of Equal., March 22, 1971.) In the present case appellant has offered nothing more than unsupported assertions that either the federal audit report or respondent's assessment was erroneous. These assertions are clearly insufficient to carry the burden placed upon him.

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Appellant next argues that the action of the Franchise Tax Board fails to consider that at the time he filed this appeal, his conviction for grand theft was on appeal before the California Court of-Appeal, Fourth District. We need only comment that since that time the Court of Appeal has dismissed appellant's criminal appeal, issuing a remittitur on January 31, 1973.

Finally, appellant alleges that he was "denied his personal files and tax support documents while incarcerated in the California State Prison." We fail to see the relevance of this argument. The year for which appellant failed to file a personal income tax return was 1969. The penalties assessed by respondent relate to appellant's failure to file a timely return for that taxable year. By the time that appellant was imprisoned in 1972, approximately two years had elapsed from the date that a timely return should have been filed. As a result, the accessibility to him of his personal records in 1972 had no bearing on a determination of his negligence in the prior year.

For the reasons discussed above, we must sustain respondent's action in this matter.

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,

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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 Curtis W. Lint against a proposed assessment of additional personal income tax and penalties in the total amount of **\$15,562.96** for the year 1969, be and the same is hereby sustained.

Done at Sacramento, California this 19th day of February, 1974, by the State Board of Equalization.

Steph Beck, Chairman  
John W. Lynch, Member  
Paul Clark, Member  
William L. Bennett, Member

ATTEST: W. W. Sumner, Secretary