

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
PETER D. AND KATHRYN C. TILTON)

For Appellants: Peter D. Tilton, in pro. per.

**For Respondent: Crawford H. Thomas
Chief Counsel**

Gary M. Jerrit
Counsel

OPINION

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 Peter D. and Kathryn C. Tilton against a proposed assessment of additional personal income tax in the amount of \$206.81 for the year 1967. Simultaneously with the filing of this appeal, appellants paid the proposed assessment and filed a claim for refund. Accordingly, pursuant to section 19061.1 of the Revenue and Taxation Code the appeal will be treated as an appeal from the denial of a claim for refund.

The primary question presented is whether respondent Franchise Tax Board properly, proposed an addition to tax for the year 1967 on the basis of federal audit adjustments to appellants' income.

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Appellant Peter D. Tilton was the executor and co-beneficiary of his mother's estate. In the estate and inheritance tax returns filed with the federal government and the State of California, \$3,020.77 was deducted as an amount paid in 1967 to the appellant as executor. Those returns have never been amended.

Peter D. and Kathryn C. Tilton filed joint federal and state personal income tax returns for 1967. The returns did not report any income received by appellant for his services as executor. The Internal Revenue Service audited appellants' federal return and increased their income by \$3,020.77 to take the above deduction by the estate into consideration. The federal adjustments were uncontested and the federal liability was satisfied in 1970 through a levy on appellant's wages.

On November 23, 1970, respondent issued a proposed assessment of additional personal income tax against the appellants in the amount of \$206.81 for the year 1967, based upon the federal adjustments. Appellants protested, the assessment was affirmed, the deficiency plus interest was paid, and this appeal was filed.

On June 29, 1973, appellants filed an amended return for 1967 with respondent. In that return they reported as income the \$3,020.77 in executor's fees and claimed a deduction for estate expenses in the amount of \$3,818.73. The net effect of these changes was to decrease their previously reported tax liability for 1967 by \$47.86. Appellants asked that this amount be refunded in addition to the amount they had paid in 1972.

The refund claim for \$47.86 was disallowed on July 27, 1973, because it was not filed within the four-year limitation period prescribed by section 19053 of the Revenue and Taxation Code. Specifically, the limitation period for filing a timely claim ended on April 15, 1972, and the subject claim was not received by respondent until June 29, 1973. Under section 19057 of the Revenue and Taxation Code, the Franchise Tax Board's action upon the claim became final when the taxpayers failed to appeal within ninety days from the mailing of the notice of action. Consequently, the \$47.86 claim is not before us for consideration.

With respect to the \$206.81 item that is before us, appellants originally contended that the \$3,020.77 fee was never received from the estate. However, the subsequent filing of an amended

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return in which the fee was reported as, income would appear to be an admission that the money, **was received**. This is consistent with appellant's representation to the State of California on the inheritance tax return that he had received the executor's fee.

Appellants also contended that they were entitled to deduct \$3,818.73 in expenses which were allegedly, incurred to settle the estate of Mr. Tilton's mother. In support of this contention appellants submitted a copy of a written acknowledgment of receipt of the money from Mr. Tilton by the attorney handling the estate. As respondent has pointed out, however, the documentation is equally supportive of a conclusion that too many assets were distributed to the beneficiaries before the debts of the estate were paid;

In any event, a determination by respondent of a deficiency based on a federal audit report is presumed correct and appellants bear the burden of proving the adjustment erroneous. (Appeal of Samuel and Ruth Reisman, Cal. St. Bd. of Equal., March 22, 1971.) The taxpayers cannot merely assert the incorrectness of a determination of tax and thereby shift the burden of proof to justify the tax and the correctness thereof. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P. 2d 414].)

From the record before us, it is clear that appellants have not carried their burden. We therefore must sustain respondent's action in this matter.

ORDER

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 19060 of the Revenue and Taxation Code that the action of the Franchise Tax Board in denying the claim of Peter D. and Kathryn C. Tilton for refund of personal income tax in the amount of \$206.81 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 12th day of November, 1974, by the State Board of Equalization.

Robert Seely, Chairman
John W. Lynch, Member
Richard K. ..., Member
William G. ..., Member.
_____, Member

ATTEST: W. W. Dunlop, Secretary