



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LILLIAN REITZ)

For Appellant: R. E. Hollander
Certified Public Accountant

For Respondent: Crawford H. Thomas
Chief Counsel

John A. Stilwell, Jr.
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 Lillian Reitz against a proposed assessment of additional personal income tax in the amount of \$187.84 for the year 1967.

Appellant Lillian Reitz and her former husband, Harry, obtained an interlocutory decree of divorce on November 3, 1967. They each filed a separate California personal income tax return for that year. Harry paid taxes on one-half of his 1967 earnings

prior to the date of the decree, and appellant reported as income an amount which she claimed to be 50 percent of those earnings. Since appellant had no access to Harry's records, however, the amount reported on her return appears to have been an estimate. After an audit, respondent adjusted this figure on the basis of information contained in Harry's return.

Harry had itemized deductions* on his return' while appellant claimed the standard deduction. In making the above mentioned adjustment to appellant's return, respondent did not allow for the itemized deductions which Harry had taken.

Respondent destroyed Harry's 1967 return sometime prior to this appeal. This was apparently done in accord with a general policy of the Franchise Tax Board to destroy old' **returns** when the statute of limitations for actions thereon has run.

Appellant objected to respondent's adjustment of her return on various grounds, but most of these issues were settled at the protest hearing. The sole issue raised on appeal is whether appellant is entitled to one-half of the community itemized deductions claimed by Harry.

Harry's earnings for 1967 up to the date of the divorce decree were community property, and 50 percent of those earnings was therefore properly includable in appellant's gross income. (Appeal of Beverly Bortin, Cal. St. Bd. of Equal., Aug. 1, 1966.) Appellant argues that the itemized-deductions claimed by Harry were also community property, and that she is therefore necessarily entitled to 50 percent of those deductions. Deductions are a matter of legislative grace, however, and the taxpayer bears the burden of proving that he or she is entitled to the deductions claimed. (Appeal of Nake M. Kamrany, Cal. St. Bd. of Equal., Feb. 15, 1972.) Appellant has offered no evidence concerning the itemized deductions claimed-&Harry; and thus has failed to sustain her burden of proof.

Appellant points out, however; that she had no access to her former husband's records, and contends that his tax return was therefore her only possible source of information concerning the deductions. In her view, respondent prevented her from qualifying for the claimed deductions by destroying--Harry's return, and it should therefore not be allowed to assign additional income, to her.

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With respect to Harry's return, Revenue and Taxation Code section 19282 makes it a misdemeanor, except in certain situations not relevant here, for the Franchise Tax Board or any employee thereof to disclose any information contained in a tax return. Therefore, even if respondent had not destroyed Harry's return, appellant could not have compelled respondent to disclose its contents. (Appeal of Beverly Bortin, supra.) Moreover, respondent has attempted to reduce the apparent inequity by allowing appellant to take the standard deduction. Under these circumstances we see no reason to preclude the allocation to appellant of her one-half community interest in Harry's earnings.

For the above reasons, we sustain the action of the Franchise Tax Board.

ORDER

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 Lillian Reitz against a proposed assessment of additional personal income tax in the amount of \$187.84 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of December, 1974, by the State Board of Equalization.

Geoff Spelly, Chairman
John W. Lynch, Member
John Lee, Member
William B. Smith, Member
_____, Member

ATTEST: W. W. Hendley, Secretary