

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DARE AND PATRICIA MILLER)

Appearances:

For Appellants: Dare Miller, in pro. per.

For Respondent: Jack E. Cordon
Supervising 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 Dare and Patricia Miller against a proposed assessment of additional personal income tax and penalty in the total amount of \$1,041. 76 for the year 1967.

Appeal of Dare and Patricia Miller

Appellants filed a joint California income tax return on which they computed their 1967 tax liability by income averaging, pursuant to sections 18241-18246 of the Revenue and Taxation Code. Subsequently, an amended return was filed for the same year wherein they recomputed their tax liability, again using the income averaging method. Respondent attempted to establish appellants' eligibility to income average by requesting substantiating information of them. Between October 1969 and May 1973, no less than twelve such attempts were made. During this period, the matter was returned to respondent's Van Nuys field office, at appellants' request, three times. Appellants, however, persisted in their failure to furnish the requested information. Accordingly, respondent recomputed appellants' tax liability for 1967 without the benefit of the income averaging provisions and, pursuant to Revenue and Taxation Code section 18683, it also computed a 25 percent penalty for failure to furnish information requested. The propriety of the resulting assessment of additional tax and penalty constitutes the sole issue for our determination.

At the hearing of this matter, appellants were unable to substantiate their eligibility to income average, contending that the substantiating documents were in the hands of the accountants who had aided them in the preparation of their 1967 amended return and would not be released to appellants until they paid certain monies owed for past services. At the conclusion of the hearing, appellants were given sixty days to produce the necessary substantiation.

Over ten months have elapsed since the hearing of this matter and as yet no substantiation of appellants' claim has been forthcoming. In our opinion appellants have been afforded more than an adequate opportunity to demonstrate their eligibility to income average. Their failure to do so leaves us no alternative but to sustain respondent's tax and penalty determination herein. (Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.)

Appeal of Dare and Patricia Miller

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 Dare and Patricia Miller against a proposed assessment of additional personal income tax and penalty in the total amount of \$1,041.76 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of March, 1975, by the State Board of Equalization.

John W. Lynch, Chairman
William B. Smith, Member
George E. Jones, Member
Paul A. Harris, Member
_____, Member

ATTEST: Charles H. Altman, Acting Secretary