



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DONALD G. AND FRANCEEN WEBB)

Appearances:

For Appellants: Donald G. Webb, in pro. per.

For Respondent: Jack E. Gordon
Supervising 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 Donald G. and Franleen Webb against a proposed assessment of additional personal income tax in the amount of \$2,632.49 for the year 1964.

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Appellants filed a joint California personal income tax return for 1964, reporting gross income of \$27,014.13 and an adjusted gross income of less than zero (-\$8,192.97). The Internal Revenue Service audited appellants' records and determined that they had additional gross receipts in the amount of \$65,000.00 in 1964. On the basis of this federal audit change, respondent issued a proposed assessment of additional California personal income tax. Upon appellants' failure to provide details regarding the final federal determination, respondent affirmed its proposed assessment and appellants filed this appeal.

Appellants maintain that the State of California should be responsible for making its own audit and that it is improper for respondent to rely on the adjustments made by the Internal Revenue Service. In our opinion this contention has no merit.

Section 18451 of the Revenue and Taxation Code requires a taxpayer to report to respondent any changes or corrections made by the Internal Revenue Service in the amount of the taxpayer's gross income. Under this section the taxpayer is required to either concede the accuracy of the final federal determination or state wherein it is erroneous. This board has held in numerous cases that a deficiency assessment issued by respondent Franchise Tax Board on the basis of a federal audit report is presumed to be correct and the burden is on the taxpayer to show that it is incorrect. (Appeal of Harry and Tessie Somers, Cal. St. Bd. of Equal., Mar. 25, 1968; Appeal of J. Morris and Leila G. Forbes, Cal. St. Bd. of Equal., Aug. 7, 1967, Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959. See also Todd v. McColgan, 89 Cal. App. 2d 509 [201 P. 2d 414].) We do not believe that appellants have sustained the burden of proving error in the final federal determination against them. In support of their position appellants have submitted some evidence of two agreements obligating appellants to pay out real estate commissions in the amounts of \$25,000.00 and \$3,750.00 from the \$65,000.00 of additional income. However, except for appellants' own self-serving statements, there is no proof that those payments were ever in fact made in 1964, the taxable year in issue. On the basis of the evidence

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before us, we must conclude that appellants have failed to overcome the presumption of correctness attaching to respondent's determination.

Appellants make an additional argument. While they concede that the Internal Revenue Service determined additional federal income tax was due for 1964, appellants point out that "subsequent losses, " apparently net operating losses carried back to prior taxable years under section 172 of the Internal Revenue Code, were available as an offset. Appellants' argument seems to be that since they received the benefits of the carry-back provisions contained in the federal law, they should receive the same treatment under California law. However, California tax law contains no provision for carry-back of net operating losses. As we stated in Appeal of Jackson Appliance, Inc., decided on November 6, 1970, "[t]he assessment at issue resulted from differences in the state and federal laws, and this board has no power to change the existing law."

For the above reasons we 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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Donald G. and Franceen Webb against a proposed assessment of additional personal income tax in the amount of \$2, 632. 49 for the year 1964, be and the same is hereby sustained.

Done at Sacramento, California, this 19 day of August 1975, by the State Board of Equalization.

John W. Lynch, Chairman
William W. Brown, Member
Clay P. Perry, Member
Robert H. Ford, Member
_____, Member

ATTEST: W. W. Dunlop, Executive Secretary