



76-SBE-017

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
HERBERT T. BRENNER AND)
ESTATE OF TENE C. BRENNER,)
DECEASED)

For Appellants: Herbert T. Brenner, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Gary M. Jerri
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 Herbert T. Brenner and the Estate of Tene C. Brenner, Deceased, against proposed assessment of additional personal income tax in the amounts of \$126.00 and \$173.02 for the years 1965 and 1966, respectively.; Subsequent

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to the filing of this appeal, Herbert T. Brenner and the Estate of Teme C. Brenner, Deceased, paid the protested assessments; therefore, pursuant to section 19061. 1 of the Revenue and Taxation Code, the appeal is treated as an appeal from the denial of a claim for refund.

Herbert T. Brenner and his former spouse, Teme C. Brenner, filed joint federal and California personal income tax returns for the years 1965 and 1966. An Internal Revenue Service audit of the Brenners' federal returns resulted in several adjustments which increased their income for each year. Upon notification of the final federal action, respondent issued proposed assessments of additional tax on the basis of the corresponding federal adjustments. Mr. Brenner protested the proposed assessments and this appeal followed. Thereafter, the Estate of Teme C. Brenner, Deceased, paid the protested tax and the accrued interest. Mr. Brenner (hereafter appellant) contributed one-half of the funds for the payment, allegedly under the threat of court action initiated by the estate.

The sole issue presented by this appeal is the propriety of respondent's action in issuing deficiency assessments based entirely upon corresponding federal action.

Appellant alleges that a compromise agreement was entered into between the Estate of Teme C. Brenner, Deceased, and the Internal Revenue Service concerning the federal deficiencies for the years in issue, and that he neither authorized nor concurred in that agreement. Appellant apparently contends that under such circumstances respondent may not issue deficiency assessments based solely upon the federal adjustments.

Respondent's determination of the deficiencies in question was based upon information forwarded to it by the Internal Revenue Service concerning the final action taken with respect to appellant's joint federal returns. It is well established that a deficiency assessment issued by respondent on the basis of corresponding federal action is presumed to be correct, and that the burden is upon the taxpayer to establish that it is erroneous. (Appeal of Paritem and Janie Poonian, Cal. St. Bd. of Equal., Jan. 4, 1972; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.) The fact that the final federal action may have resulted from

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a settlement agreement in which appellant did not concur does not alter the presumption of correctness which attaches to respondent's action. Appellant's mere assertion of the incorrectness of the federal determination does not shift the burden to respondent to justify the deficiency assessment and the correctness thereof. (See Todd v. McColgan, 8 Cal. App. 2d 509, 514 [201 P. 2d 414]; Appeal of Samuel and Ruth Reisman, Cal. St. Bd. of Equal., March 22, 1971.)

Appellant has not presented any evidence or offered any explanation to show either that the federal action was erroneous or that respondent's action based thereon was incorrect. Accordingly, we must conclude that respondent's action in this matter was correct and that appellants are not entitled to the claimed refund of taxes paid for the years 1965 and 1966.

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 1.9060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Herbert T. Brenner and the Estate of Teme C. Brenner, Deceased, for refund of personal income tax in the amounts of \$126.00 and \$173.02 for the years 1965 and 1966, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of March, 1976, by the State Board of Equalization.

William H. Brennan, Chairman
Paul H. Hays, Member
George E. Hays, Member
_____, Member
_____, Member

ATTEST: W. W. Hurd Secretary