



76-SBE-019

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
IRISE, CLARK)

Appearances:

For Appellant: Ardie McBrearty

For Respondent: David M. Hinman
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 Iris E. Clark against a proposed assessment of additional personal income tax in the amount of \$36.80 for the year 1971.

Appeal of Iris 13. Clark

Iris E. Clark (hereafter appellant) filed federal and California personal income tax returns for the year 1971 on which she claimed certain itemized deductions. An Internal Revenue Service audit of the federal return resulted in the disallowance of the itemized deductions and a corresponding increase in appellant's taxable income. Upon notification of the federal action, respondent issued a proposed deficiency assessment in conformity with the federal adjustments. Appellant protested the proposed assessment and this appeal followed.

Subsequent to the filing of this appeal, appellant submitted to this board a form, apparently intended to be an amended return for the year 1971, wherein appellant stated that she had received no income for that year. Appellant's argument is based upon broad assertions concerning the constitutionality of the federal and state systems of taxation. In essence, appellant contends that the systems of taxation are not based upon the monies of-account of the United States or upon legal tender (gold and silver coin), but are unconstitutionally determined on the basis of unlawful paper money. In support of her position, appellant further contends that the National Bank Act of 1864 (12 U. S. C. § 21 et seq.) and the Federal Reserve Act of 1913 (12 U. S. C. § 221 et seq.) are unconstitutional; that the Federal Reserve Banks, as agencies organized under those acts, by issuing Federal Reserve notes, are coining money in violation of section 8 of article 1 of the United States Constitution; and that the Internal Revenue Code and Revenue and Taxation Code, as presently administered, are in violation of the Fifth and Fourteenth Amendments. Finally, appellant asserts that the statements of income and deductions contained in her state tax return must be presumed to be correct, and that respondent improperly based its deficiency assessments solely upon corresponding federal action.

This board has a well established policy of abstention from deciding constitutional questions in appeals involving deficiency assessments. (Appeal of James S. and Marian Forkner, Cal. St. Bd. of Equal., Aug. 7, 1963; Appeal of Humphreys Finance Co., Inc., Cal. St. Bd. of Equal., June 20, 1960.) This policy is based upon the absence of specific statutory authority which would allow the Franchise Tax Board to obtain judicial review of an adverse decision in a case of this type, and our belief that such review should be available for questions of constitutional importance. (Appeal of C. Pardee Erdman, Cal. St. Bd. of Equal., Feb. 18, 1970.)

Appeal of Iris E. Clark

Since this abstention policy properly applies with respect to the instant appeal, ^{1/} the sole remaining issue is whether respondent's action in issuing its deficiency assessment based upon corresponding federal action was proper.

This board has consistently held 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 incorrect. (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; see also Rev. & Tax. Code, § 18451.) The taxpayer's mere assertion of the incorrectness or impropriety of the federal determination does not shift the burden to respondent to justify the deficiency assessment and the correctness thereof. (See Todd v. McColgan, 89 Cal. App. 2d 509, 514 [201 P. 2d 414]; Appeal of Samuel and Ruth Reisman, Cal. St. Bd. of Equal., March 2, 1971.) Furthermore, contrary to appellant's contention, a presumption of correctness does not attach to the information contained within a taxpayer's return. (See Todd v. McColgan, supra; Appeal of Robert C. Sherwood, Deceased, Cal. St. Bd. of Equal., Nov. 30, 1965; Cal. Admin. Code, tit. 18, § 5036.)

Appellant has not presented any evidence or offered any explanation, other than her philosophical and political beliefs regarding the monetary system of the United States, to show either that the federal action taken with respect to her 1971 federal return, or that respondent's action based thereon, was improper or erroneous. Accordingly, we must sustain respondent's action in this matter.

^{1/} We do note, however, that several recent federal court decisions have dismissed, as frivolous, constitutional challenges similar to those presented by this appeal. (See United States v. Daly, 481 F. 2d 28, 30, cert. denied, 414 U. S. 1064 [38 L. Ed 2d 469]; United States v. Porth, 426 F. 2d 519, 523, cert. denied, 400 U. S. 824 [27 L. Ed. 2d 53]; Koll v. Wayzata State Bank, 397 F. 2d 124; Horne v. Federal Reserve Bank of Minneapolis, 344 F. 2d 725, 729; Hartman v. Switzer, 376 F. Supp. 486, 489; Edward A. Cupp, 65 T.C. No. 6 (1975), aff'd, 493 F. 2d 1400.)

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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 Iris E. Clark against a proposed assessment of additional personal income tax in the amount of \$36.80 for the year 1971, be and the same is hereby sustained.

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

William L. Gann, Chairman
Paul Horn, Member
George H. Lee, Member
_____, Member
_____, Member

ATTEST: *W. W. Rindorf*, Executive Secretary