BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
DANIEL H. H., JR., AND)
JANE S. INGALLS)

For Appellants:	Daniel H. H. Ingalls, Jr. , in pro. per.
For Respondent:	Bruce W. Walker Chief Counsel
	Brian W. Toman 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 Daniel H. H. , Jr. , and Jane S. Ingalls against a proposed assessment of additional personal income tax in the amount of $488.05 for the year. 1972.

Appeal of Daniel H. H., Jr. , and Jane S. h-galls

Appellants filed a joint personal income tax return for 1972 and computed their tax liability based upon the income averaging provisions. (Rev. & Tax. Code, §§ 18241-18246.) Respondent disallowed. the use of income averaging because Mrs. Ingalls had not been a resident of California during the entire base period as required by section 18243 of the Revenue and Taxation Code. Appellants protested the proposed assessment which was issued to reflect the disallowance of income averaging. Subsequently, appellants filed amended separate returns for 1972; however, only Mr. Ingalls utilized the income' averaging, provisions. Respondent refused to accept the amended returns on the basis that appellants were not allowed to change their filing status from joint to separate after the return due date. Thereafter, respondent affirmed the proposed assessment and this appeal followed.

The question presented is whether the amended 1972 separate return submitted after the due date by appellant Daniel H. H. Ingalls, Jr. , may be considered in determining his eligibility to separately average income when he had previously filed a joint return with his spouse for the same taxable year.

Appellants contend that they are entitled to the privilege **of income averaging and should not have been penalized for an invalid tax** return. Respondent takes the position that under the law married taxpayers cannot change their filing status from joint to separate after the due date of the return.

The Appeal of Wallace W. and Rise B. Berry, Cal. St. Bd. of Equal., , decided on February 6, 1973, presented similar facts and issues. In Berry we stated:'

Foriner sections 18409-18409.9 of the Revenue and Taxation Code (in effect beginning April 18, 1952) did permit taxpayers, who had previously filed a joint return, to file separate returns for the same year as late as 4 years' after the due date of the return for that year. The enactment of these sections changed the law, which previously had clearly provided that separate returns

could not be filed after a joint return unless they were filed before the due date of the taxpayer's return for the year in question. (Appeal of Max and Li l y Pete rman, Cal. St. Bd. of Equal. , June 12, 1957.) But these sections were repealed effective November 10, 1969, by chapter 980 of the 1969 Statutes, and the Legislature specified in section 22 of chapter 980 that the repealer was to be applied on and after the effective date of that chapter. Consequently, on November 19, 1969, the law which existed prior to the enactment of sections 18409- 18409.9 was reinstated.

Under the circumstances, we must sustain respondent's action.

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 Daniel H. H. , Jr., and Jane S. Ingalls against a proposed assessment of additional personal income tax in the amount of $488.05 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1976, by the State Board of Equalization.

_____ , Chairman

_____ , Member

_____ , Member

_____ , Member

_____ , Member

ATTEST: _____ , Executive Secretary