



## Appeal of William and Alma Wolfson

The sole question presented by this appeal is whether respondent's proposed assessments of additional personal income tax, based upon a federal audit report, were proper.

Appellants filed federal and state personal income tax returns for the years 1963 and 1964. The 1963 returns were filed late. The Internal Revenue Service audited appellants' federal income tax returns for both years. On the basis of the revenue agent's report, respondent determined that appellants had understated their California taxable income for 1963 and 1964 by \$18,978.07 and \$71,529.09, respectively. The Internal Revenue Service had also assessed a ten percent delinquent filing penalty for 1963 and a five percent negligence penalty for both 1963 and 1964. Respondent proposed penalties comparable to those imposed by the federal authorities.

Subsequently the Internal Revenue Service revised its tax assessments and determined that there was no additional federal tax liability for the years in question. The only explanation given by appellants with respect to the federal revision was that the Internal Revenue Service had "ruled that no tax was owed due to business losses." Respondent assumes the federal change was made to reflect 1965 net operating losses which could be carried back to reduce federal income tax liability in prior years, but which could not be carried back under California law.

Appellants apparently feel that since they were absolved of additional federal income tax liability for 1963 and 1964, the same result should follow under California law. We cannot agree.

It is well established that a deficiency assessment issued by respondent 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 erroneous. (Todd v. McObigan, 89 Cal. App. 2d 509 [201 P. 2d 414]; Appeal of Harry & Tessie Somers, Cal. St. Rd. of Equal., March 25, 1968; see also section 18451 of the Revenue and Taxation Code.) Although the Internal Revenue Service apparently determined that due to net operating loss deduction carrybacks there

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was no additional federal income tax liability for 1963 and 1964, appellants were still obligated under section 18451. to concede the accuracy of the federal determination of gross income or allowable deductions, or state wherein it was incorrect. (See Appeal of Jackson Appliance, Inc. , Cal. St. Bd. of Equal. , Nov. 6, 1970.) In the instant case, appellants have neither explained adequately the federal revisions nor attempted to show that the initial federal adjustments were erroneous. Under the circumstances, we must sustain the action of the respondent.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefore,

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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 William and Alma Wolfson against proposed assessments of additional personal income tax and penalties in the total amounts of \$1,385.42 and \$2,274.39 for the years 1963 and 1964, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of May, 1976, by the State Board of Equalization.

*William B. Boyd*, Chairman  
*Clay Perry*, Member  
*Robert H. ...*, Member  
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\_\_\_\_\_, Member

ATTEST: *W. W. ...* e S e c r e t a r y