

BEFORE **THE** STATE BOARD OF EQUALIZATION
OF **THE** STATE OF CALIFORNIA

In the Matter of the Appeal of }
THOMAS AND VERA WILLS }
}

For Appellants: Vera Wills, in pro. per.

For Respondent: James W. Hamilton
Acting Chief Counsel

Paul J. Petrozzi
Counsel

O P r 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 Thomas and Vera Wills against proposed assessments of additional personal income tax in the amounts of **\$26.26** and **\$125.00** for the year 1965.

Appeal of Thomas and Vera Wills

The sole issue for determination is whether appellants have met their burden of establishing that a federal determination relied upon by respondent in issuing a proposed assessment was erroneous.

As a result of a federal audit report, respondent issued notices of proposed assessment to appellants in the total amount of \$151.26 for the year 1965. Appellants protested the assessments indicating that they were **con-**testing the federal action in the United States Tax Court. Thereafter, respondent made several requests for additional information concerning the disposition of the Tax Court matter. Receiving no response to its requests, respondent issued notices of action affirming **the proposed assessments**. Appellants appealed this action, indicating that the Internal Revenue Service had reduced its original assessment from \$526.17 to \$393.31. Appellants concluded that, in view of the reduction of the federal assessment, the tax owed to the state could not possibly be \$151.26. Thereafter, respondent recomputed the proposed tax assessment based upon the decrease allowed by the final federal settlement. This resulted in a decrease in the proposed assessment of \$61.42 leaving a balance due from appellants of \$89.84 plus interest as provided by law.

Section 18451 of the Revenue and Taxation Code provides, in part, **that a taxpayer shall either concede** the accuracy of a federal determination or state wherein it is erroneous. It is **well** settled that a determination by the Franchise Tax Board based upon a federal audit is presumed to be correct and the burden is on the taxpayer to overcome that presumption. Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414] (1949); Appeal of Willard D. and Esther J. Schoellerman, Cal. St. Bd. of Equal., **Sept. 17, 1973**; Appeal of Joseph B. and Cora Morris, Cal. St. Bd. of Equal., Dec. 13, 1971.) Here, appellants have offered no evidence to **indicate** that the federal action was erroneous. Therefore, we must conclude that appellants have failed to carry their burden and respondent's determination of additional tax, in the amount of \$89.84 for the year 1965 must be upheld.

Appeal of Thomas and Vera Wills

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 Thomas and Vera Wills against proposed assessments of additional personal income tax in the amounts of \$26.26 and \$125.00 for the year 1965, be and the same is hereby modified to reflect the \$61.42 reduction. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 15th day of December, 1976, by the State Board of Equalization.

William L. Bennett, Chairman
George J. Hickey, Member
Paul J. Hickey, Member
Irene Sankey, Member
_____, Member

ATTEST: W. W. Lemlop Secretary