



Appeal of Ronald L. and Tobye F. Kave

The sole issue presented for decision is whether appellants have shown that the federal **adjustment** to claimed deductions for charitable contributions was erroneous.

Appellants' federal income tax return for the year 1970 was audited by the Internal Revenue Service. In their return, appellants had deducted charitable contributions in the amount of \$27,084. The Internal Revenue Service disallowed all but \$2,583 of the amount claimed as a deduction.

Appellant Ronald L. Kaye is a medical doctor. According to the federal audit report, he solicited donations of drugs and medical supplies from other doctors and from suppliers of such items for the purpose of forwarding these supplies to Hadassah, a charitable **organization**. To the extent of the disallowance, the federal authorities concluded that Dr. Kaye was not the owner of the drugs which were contributed and, consequently, he had nothing to donate to charity. The federal government viewed Dr. **Kaye's** role to be similar to one who goes from door to door collecting for the March of Dimes or to a merchant who has a Goodwill box in front of his store and collects the contributions of others which are destined for charity.

Respondent issued a notice of proposed assessment incorporating the federal adjustment for state income tax purposes. Respondent's disallowance of appellants' timely filed protest resulted in this appeal.

Under section 18451 of the Revenue and Taxation Code, the taxpayer must either concede the accuracy of the federal determination or state wherein it is erroneous. **It** has been repeatedly held to be the taxpayer's burden to affirmatively overcome the presumptive correctness of a federal determination. (Appeal of Harry and Tessie Somers, Cal. St. Bd. of Equal., March 25, 1968; Appeal of J. Morris and Leila G. Forbes, Cal. St. Bd. of Equal., Aug. 7, 1967.)

In the present matter it has not been shown that the federal authorities were in error when they concluded that appellant merely acted as a conduit and **did not** own the drugs and supplies which were solicited from others and contributed to Hadassah. Absent ownership, appellants are put in the untenable position of

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claiming a deduction which legally belongs to the people who understood when they placed the drugs and supplies in appellant's hands that they would be passed on to charity. (See J. Morgan Wilson, T.C. Memo, Feb. 21, 1952, and **Mack** R. Herring, 66 T.C. 308.)

Since appellants have failed to substantiate their entitlement to the disallowed portion of the charitable contributions, the action of the Franchise Tax Board must be sustained.

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 Ronald L. and **Tobye** F. Kaye against a proposed assessment of additional personal income tax in the amount of \$862.42 for the year 1970, be and the same is hereby sustained.

Done at Sacramento, California, this 2nd day of March , 1977, by the State Board of Equalization.

*William L. Bennett* , Chairman  
*George R. [unclear]* , Member  
*John [unclear]* , Member  
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\_\_\_\_\_, Member

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