



In the Matter of the Appeal of)
)
PHILLIP AND WINIFRED PURER)

Kendall Kinyon
Counsel

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 **Phillip** and Winifred Purer against a proposed assessment of personal income tax in the amount of **\$3,078.86** for the year 1972.

Appeal of Phillip and Winifred Purer

Appellant **Phillip** Purer was employed by Victory Puretec, a California corporation, from August 1971 until July 1972. Later in 1972 the Los Angeles County District Attorney began to investigate him on charges that he had embezzled or otherwise misappropriated funds from the corporation. As part of its investigation the district attorney examined the records, of a bank where appellant maintained an account. These records revealed that during 1972 appellant had received several checks issued by customers of Victory Puretec or its subsidiaries as payment for the purchase of merchandise, and that appellant had cashed these checks or deposited them in his personal account. The total value of such checks was **\$38,481.17**.

As a result of this investigation, an indictment was filed against appellant in the Los Angeles County Superior Court. Pursuant to a plea bargain, appellant ultimately pled nolo contendere to two counts of grand theft involving \$10,859, and the remaining counts of the indictment were dismissed. Subsequently, on the basis of the district attorney's investigation, respondent determined that the **\$38,481.17** in checks which **appellant** had cashed or deposited in his personal account represented unreported taxable income. It accordingly issued the proposed assessment in question.

Appellant has offered no explanation for the checks which he cashed or deposited in his own account. He contends only that there is no evidence to show that he actually received the proceeds of those checks or, if he did, that the proceeds were taxable income. It is settled, however, that respondent's reasonable reconstruction of a taxpayer's income is presumed correct, and the taxpayer bears the burden of disproving the computation.

(Breland v. United States, 323 F.2d 492 (5th Cir. 1963); Appeal of David Leon Rose, Cal. St. Bd. of Equal., March 8, 1976.) Here, the district attorney's investigation indicated that appellant had received at least **\$38,481.17** in corporate funds and that he had diverted those funds to his own use. In our opinion, this evidence creates a reasonable inference that appellant received taxable income in that amount. (See James v. United States, 366 U.S. 213 [6 L. Ed. 2d 2461 (1961)].) Appellant bears the burden of proving the contrary and, since he has made no attempt to do so, we must hold for respondent on this issue. (See Howard A. Cozad, ¶ 71,272 P-H Memo. T.C. (1971) .)

Appeal of Phillip and Winifred Purer

Appellant also asserts that he is entitled to unspecified deductions which allegedly exceed the amount of unreported income. Once more, however, he has failed to offer any evidence. Since he bears the burden of proving that he is entitled to the deductions claimed, we must again hold for respondent. (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348] (1934).)

For the above reasons, respondent's action in this matter is 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 **Phillip** and Winifred Purer against a proposed assessment of personal income tax in the amount of **\$3,078.86** for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of September , 1977, by the State Board of Equalization.

William R. Burt, Chairman
Paul J. Gering, Member
Robert H. Jensen, Member
J. S. Sweeney, Member
_____, Member