BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JAMES T. AND JANICE SENNETT)

For Appellants: James T. Sennett, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
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 James T. and Janice Sennett against a proposed assessment of additional personal income tax in the amount of $58.63 for the year 1973.

The primary issue for resolution is whether respondent's determination which was based on corresponding-federal action was erroneous.

On their 1973 state personal income tax return appellants claimed a deduction for child care expenses. Respondent disallowed that deduction and proposed an assessment against appellants in the amount of $15.63. The assessment was not contested and appellants paid the amount due. Thereafter, the Internal Revenue Service' made certain adjustments to appellants' federal income tax return for 1973. These adjustments consisted of the partial disallowance of employee business expenses claimed by appellants, and the partial disallowance of a claimed casualty loss'deduction. In November 1975 respondent issued a second proposed assessment based on the corresponding federal adjustments. It is the'second deficiency assessment in the amount of $58.63 which is the subjectof this controversy.

Appellants argue that, since they have paid the first assessment, they should not have to pay' the same bill twice. It should be emphasized that the first assessment in the amount of $15.63 involved the disallowance of a claimed child care deduction. The second assessment, in the amount of $58.63, involving the partial disallowance of enipioyee business expense and a casualty loss deduction, did not 'include any amount previously assessed on account of the disallowed child care deduction.'

It is well settled that the Personal Income Tax Law expressly authorizes respondent to propose a second deficiency' assessment'even after a former assessment for the same year has been paid. (Appeal 'of J. H. Hoeppel, Cal. St. Bd. of Equal., Feb. 26, 1962; Appeal of Louis Hozz and Ettie Hozz, Cal. St. Bd. of Equal., March 30, -1944; see also Rev. & Tax. Code, §§ 18583 and 18584.) Accepting payment for one assessment does not extinguish respondent's power to issue subsequent timely assessments for the same year. The propriety of any assessment depends solely upon its own validity and not upon whether a prior assessment has been paid.

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.) 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 of proof and respondent's determination of additional tax for the year 1973 must be upheld.

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 James T. and Janice Sennett against a proposed assessment of additional personal income tax in the amount of $58.63 for the year 1973, be and the same is hereby sustained.

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

Chairman

, Member

, Member

, Member

, Member