

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
HARRY AND JEANETTE KOHM)

For Appellants: Harry Kohm, in pro. per.

For Respondent: Bruce W. Walker
 Chief Counsel

Jeffrey M. Vesely
 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 Harry and Jeanette Kohm against a proposed assessment of additional personal income tax in the amount of \$207.82 for the year 1973.

Appeal of Harry and Jeanette Kohm

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.

The Internal Revenue Service audited appellants' 1973 federal income tax return and determined that a deficiency existed. Subsequently, respondent issued a notice of proposed assessment based upon the federal audit report to the extent applicable to appellants' California personal income tax liability. The only item applicable was an increased net long term capital gain.

The revenue agent's report indicates that appellants sold their 50 percent stock interest in Glendale Liquors, Inc., during 1973 and reported neither gain nor loss from the sale. The report indicates further that the actual gain from the transaction was \$4,750. Respondent's determination was based on the inclusion of this amount in appellants' income for the year in issue. Appellants have offered no evidence which would indicate that the determination was incorrect.

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 \$207.82 for the year 1973 must be upheld.

Appeal of Harry and Jeanette Kohm

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 Harry and Jeanette Kohm against a proposed assessment of additional personal income tax in the amount of \$207.82 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of February, 1978, by the State Board of Equalization.

Scott Perry, Chairman
Paul Chen, Member
Iris Sawyer, Member
William B. Burch, Member
_____, Member