

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
SAM AND JEANNE CHELNER )

For Appellants: Sam Chelner, 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 Sam and Jeanne Chelner against a proposed assessment of additional personal income tax in the amount of \$193.96 for the year 1971. Subsequent to the filing of this appeal, respondent conceded that the correct amount of the assessment should be \$141.00.

Appeal of Sam and Jeanne Chelner

The question presented is whether respondent's assessment, which was based on a federal audit report, is proper.

According to a revenue agent's report obtained by respondent, the Internal Revenue Service disallowed certain unsubstantiated charitable contribution and interest expense deductions claimed by appellants on their federal income tax return for 1971. Appellants apparently petitioned the U.S. Tax Court to review the IRS action, but the record before us does not reveal whether the Tax Court modified IRS's **action** in any way. After failing to elicit any information from appellants regarding the final disposition of their federal tax liability, respondent issued a deficiency assessment which corresponded to the increase in appellants' **income** reflected by the federal deficiency notice.

A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that **respondent's** assessment is erroneous. (Appeal of Donald G. and Franceen Webb, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.) Despite numerous opportunities to produce evidence in support of their position, appellants have failed to provide any substantiation of their right to the deductions disallowed by respondent and IRS. Under such circumstances, we are compelled to hold that appellants have not satisfied their burden of proof. Respondent's action will therefore be sustained, subject to the concession noted in the first paragraph of this opinion.

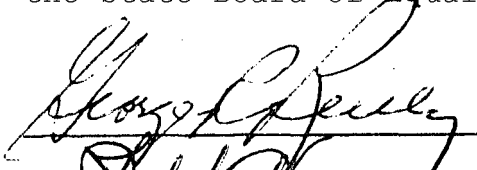
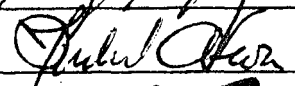


O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Sam and Jeanne Chelner

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 Sam and Jeanne Chelner against a proposed assessment of additional personal income tax in the amount of \$193.96 for the year 1971, be and the same is hereby modified in accordance with respondent's concession. In all other respects, respondent's action is sustained.

Done at Sacramento, California, this 26th day of July, 1978, by the State Board of Equalization.

  
\_\_\_\_\_, Chairman  
  
\_\_\_\_\_, Member  
  
\_\_\_\_\_, Member  
  
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