

Appeal of Khristi A. Shultz

The sole question for decision is whether respondent's deficiency assessment based upon a federal audit report was proper.

During 1972 appellant resided in Los Angeles, California, where she worked as a music director. In her California personal income tax return for that year, she claimed an employee travel expense deduction in the amount of \$1,443.00 and miscellaneous itemized deductions totalling \$3,265.00. Similar deductions were claimed on her 1972 federal income tax return.

In 1975 respondent received an Internal Revenue Service agent's report showing adjustments to appellant's 1972 return. Those adjustments consisted of the **disallowance** for lack of substantiation of the \$1,443.00 business travel expense deduction and various other itemized deductions. The federal standard deduction was allowed in place of the reduced itemized deductions. Respondent issued a notice of proposed assessment based upon those federal audit adjustments. When appellant's protest against that deficiency **assessment was** denied, she filed this timely appeal.

Appellant contends, without specificity, that both the federal and state deficiency assessments are incorrect. At the protest level she alleged that, in an effort to substantiate the **deductions** claimed on her federal return, she had sent a "shoebox full of receipts" to the Internal Revenue Service. In her protest she also stated that the only further communications she received from the Internal Revenue Service were computerized statements of accrued interest on an amount of tax due which, she contends, had never been finally determined. Appellant's position in this appeal seems **to be** that, although she disagrees with respondent's disallowance of the deductions claimed, she is unable to furnish proof of her entitlement to those deductions because of the Internal Revenue Service's alleged failure to return the receipts which she submitted.

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 an assessment issued by respondent on the basis of 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 4141 (1949)]; Appeal of Edward L. Smith, Cal. St. Bd. of Equal., June 28, 1977; Appeal of

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William B. and Sally Spivak, Cal. St. Bd. of Equal., Feb. 26, 1969; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.) The taxpayer cannot merely assert the incorrectness of an assessment and thereby shift the burden to respondent to justify the tax and the correctness thereof. (Todd v. McColgan, supra; Appeal of Thomas L. and Wylma Gore, Cal. St. Bd. of Equal., Dec. 11, 1973.) Nor is appellant's burden lessened by any alleged inability to produce supporting evidence. (Appeal of Earle J. and Mildred H. Fischer, Cal. St. Bd. of Equal., April 6, 1978; Appeal of Wing Edwin and Faye Lew, Cal. St. Bd. of Equal., Sept. 17, 1973; Appeal of Thomas L. and Wylma Gore, supra.)

Appellant has offered no evidence to establish error in the original federal adjustments or in respondent's assessment based thereon. Although she states that the federal determination never became final, she has offered no proof of that allegation. In fact, her admission that the only further communications she received from the Internal Revenue Service were statements showing interest accruing on an amount of tax due would suggest that the original federal determination had been finalized without adjustment.

Based upon the above, we conclude that appellant has failed to carry her burden of proof, and respondent's action in this matter must **therefore** be sustained.

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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 Khristi A. Shultz against a proposed assessment of additional personal income tax in the amount of \$108.00 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of September, 1978, by the State Board of Equalization.

Geoffrey, Chairman
Paul Allen, Member
Ann Barber, Member
William B. Bennett, Member
_____, Member