

Appeal of Herman D. and Russell Mae Jones

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

Appellants filed joint federal and California personal income tax returns for the year 1973 in which they claimed a **deduction** for child care expenses. Respondent issued a proposed assessment disallowing the deduction which **ultimately** became final without any appeal to this **board**. Thereafter, an Internal Revenue Service (IRS) audit of the federal return resulted in total or partial disallowance of various deductions claimed by appellants. As a consequence of the federal adjustments, respondent issued an additional proposed **assessment** further revising appellants' taxable income for state income tax purposes to the extent the federal adjustments were applicable to the California return. Appellants **duly** protested and explained that the federal tax matter was before the United States Tax Court.

Subsequently, appellants informed respondent that as a result of an adverse decision in the tax court, they paid the federal tax proposed in the federal report. Respondent then affirmed its additional proposed assessment.

This present **appeal** was made by appellants with respect to their state tax liability because they were advised by the federal government that they were to receive a refund relating to their 1973 **federal** income tax liability. **Appellants** subsequently did receive a refund from the IRS in March of 1978 in the amount of **\$1,096.58**. Respondent, however, was later advised by the IRS that the federal refund was issued as a result of appellants' account being overpaid, and not because of any later revision of the federal tax deficiency for 1973. The **IRS explained** that it had offset overpayments **by appellants** relating to their 1975 and 1976 federal tax returns **against** the 1973 tax liability, and this coupled with appellants' subsequent payment of the federal tax deficiency, resulted in the overpayment and necessity of a refund.

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 report is presumed correct, and the burden is on the taxpayer to overcome that presumption. (Appeal of Sam and Jeanne Chelner, Cal. St. Bd. of Equal., July 26 1978; Appeal of Samuel and Ruth Reisman, Cal. St. Bd. of Equal., March 22, 1971.) Appellants **clearly** have not provided any substantiation of their right to deduct the amounts disallowed by respondent and the IRS. Under such circumstances, we must sustain respondent's **action**.

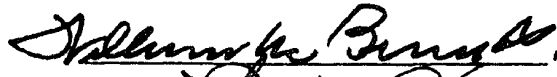
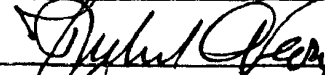
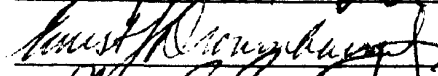
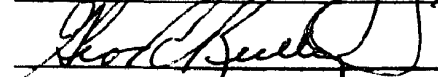

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O R D E R

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 Herman D. and Russell Mae Jones against a proposed assessment of additional personal income tax in the amount of \$193.37 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this **10th** day of April , 1979, by the State Board of Equalization.

 Chairman
 Member
 Member
 Member
 Member