



Appeal of John W. and Joyce M. Emerson

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

In 1975 appellants won a 1975 Datsun station wagon as a prize. Appellants reported the \$3,500 wholesale value of the **automobile** as income on their 1975 state and federal returns. The Internal Revenue Service increased the value of the prize to \$4,464 which resulted in a federal deficiency in the amount of \$245 for the year in issue. Respondent issued a notice of proposed assessment conforming to the federal adjustment.

Appellants protested respondent's proposed assessment on the grounds that the value of the automobile as stated in the federal audit report was in excess of its true value. Appellants contended that they could have purchased the same **automobile for** less than the retail price stated in the federal audit report. Subsequently, appellants provided respondent with a copy of the decision of the United States Tax Court with respect to the adjustment made by the Internal Revenue Service: The Tax Court decision revealed that the controversy was settled by a stipulation which reduced the deficiency from \$245, as stated in the audit report, to \$125. Based on these figures respondent determined the increase in appellants' taxable income to be \$492, which established the automobile's fair market value as \$3,992. In accordance with this information respondent reduced its original proposed assessment to conform to the final federal action.

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 corresponding federal action 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.)

Appellants' efforts to prove that the automobile which they won was worth \$3,500 resulted in the Internal Revenue Service's reduction of the value for tax purposes from \$4,464 to approximately \$3,942. A reduction from the list or "sticker" price in determining fair market value is consistent with the decision in Lawrence W. McCoy, 38 T.C. 841 (1962). In recomputing appellants' **final** 1975 income, respondent also reduced the value of the automobile from \$4,464 to \$3,942 in order to conform to the final federal determination. Appellants

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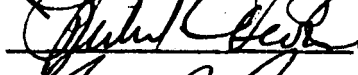

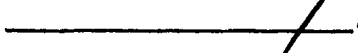
provided no evidence to suggest that this valuation was incorrect. In the absence of any convincing evidence of a lesser value for the automobile, respondent's determination in this matter must be sustained.

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 **John W. and Joyce M. Emerson**, against a proposed assessment of additional personal income tax in the amount of \$44.09 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of June, 1979, by the State Board of Equalization.

  
Chairman  
  
Member  
  
Member  
  
Member  
  
Member