

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CHARLES A. AND EVELYN W. NEMISH)

For Appellants: Charles A. Nemish, in pro. per.

For Respondent: 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 Charles A. and Evelyn W. Nemish against proposed assessments of additional personal income tax in the amounts of **\$108.26**, \$273.56, \$232.37 and \$639.90 for the years **1967, 1968**, 1969 and 1970, respectively.

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The sole issue for resolution is whether respondent correctly applied final federal adjustments in determining appellants' California personal income tax liability for the years in issue.

Appellants' federal income tax returns for the years 1967 through 1970 were audited by the Internal Revenue Service. Several adjustments were proposed involving the disallowance of various deductions. Appellants contested these adjustments and ultimately filed petitions in the United States Tax Court for all four years. Respondent learned that the petitions were filed in 1975. In 1976, respondent requested appellants to furnish copies of the federal audit reports and a copy of their state tax returns for each of the years in issue. When appellants failed to provide the requested information, respondent issued proposed assessments for each year computed on the basis of available information. Appellants protested the proposed assessments.

During the course of the protest proceedings appellants provided copies of the final Tax Court decisions reflecting the **amount** of the final federal deficiency assessments for each year. Appellants also provided copies of their 1969 and 1970 state tax returns as well as copies of cancelled checks evidencing their timely payment of state income tax for the years in issue. Based on this information respondent revised its proposed assessments and withdrew penalties it **had previously assessed for delinquent filing and for failure** to furnish requested information. Appellants bring this appeal from respondent's 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 4143 (1949)]; Appeal of Frank and Laura J. Randall, Cal. St. Bd. of Equal., Dec. 11, 1963.)

In the present appeal appellants do not contest the correctness of the federal adjustments. They merely contend that respondent's adjustments were arbitrarily and incorrectly computed. However, they have offered no evidence to support their position. In the absence of such evidence, respondent's determination in this matter must 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 Charles A. and Evelyn W. Nemish against proposed assessments of additional personal income tax in the amounts of \$108.26, \$273.56, \$232.37 and \$639.90 for the years 1967, 1968, 1969 and 1970, respectively, 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