



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
RAUL AND CAROLINE NAVARRETTE)

For Appellants: Caroline Navarrette, in pro. per.
For Respondent: Claudia K. Land
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Raul and Caroline Navarrette against a proposed assessment of additional personal income tax in the amount of \$73.77 for the year 1974,

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Appellants' 1974 federal income tax return was audited by the Internal Revenue Service and the following adjustments resulted: (1) a \$513.00 sales tax deduction claimed by appellants was reduced to \$141.00; (2) a \$1,781.00 medical expense deduction was disallowed in its entirety; and (3) miscellaneous itemized deductions totalling \$1,153.00 were disallowed. Upon receipt of the federal audit report, respondent issued its notice of proposed assessment of additional tax based upon the federal adjustments. In computing appellants' revised tax liability for 1974, respondent used the standard deduction, which was more beneficial to appellants after the reduction in their allowable itemized deductions. The **primary** question presented by this appeal is whether respondent's proposed assessment based upon the federal audit adjustment was proper.

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 deficiency assessment issued by respondent on the basis of a federal audit is presumed to be correct, and the burden is on the taxpayer to prove it erroneous. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P. 2d 414](1949); Appeal of Khristi A. Shultz, Cal. St. Rd. of Equal., Sept. 27, 1978; Appeal of Nicholas H. Obritsch, Cal. St. Rd. of Equal., Feb. 7, 1959.) Appellants herein have made no attempt to establish error in the federal determination; indeed, they have not even identified any specific item adjustment which they dispute. Under those circumstances we must conclude that appellants have failed to carry their burden of proof, and respondent's assessment of additional tax due for 1974 must be upheld.

Appellants also have voiced their objection to being charged interest on the deficiency during the period they were protesting that assessment. Section 18688 of the Revenue and Taxation Code mandates the imposition of interest upon a deficiency "from the date prescribed for the payment of the tax until the date the tax is paid." The interest is not a penalty imposed on the taxpayer, but is merely compensation for the taxpayer's use of the money during the period of underpayment. (Appeal of Amy M. Yamachi; Cal. St. Bd. of Equal., June 28, 1977; Appeal of Audrey C. Jaegle, Cal. St. Rd. of Equal., June 22, 1976.) In view of our determination that the **additional tax** was properly assessed, neither appellants' protest

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against the deficiency assessment nor the filing of this appeal can have any effect upon the continued accrual of interest on that amount until it is paid, pursuant to the provisions of section 18688.

For the reasons stated above, we conclude that respondent's action 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 Raul and Caroline Navarrette against a proposed assessment of additional personal income tax in the amount of \$73.77 for the year 1974, be and the same is hereby sustained.

September Done at Sacramento, California, this 25 day of
, 1979, by the State Board of Equalization.

William W. Banks, Chairman
Daryl Lee, Member
Ernest Droumburg, Member
George P. Peleg, Member