



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
 ROBERT F. AND CLARA B. PYLE)

Appearances:

For Appellants: Robert F. Pyle, in pro. Per.
For Respondent: John A. Stilwell, Jr.
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 Robert F. and Clara B. Pyle against a proposed assessment of additional personal income tax in the amount of **\$1,229.01** for the year 1973.

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The sole question for decision is whether respondent's issuance of a proposed assessment of additional tax for 1973 on the basis of a federal audit report was barred by the fact that a previous deficiency assessment for the same taxable year had issued and been paid by appellants.

Upon review of appellants' 1973 California personal income tax **return**, respondent determined that they had incorrectly computed their tax on preference income. On October 10, 1974, respondent issued a notice of proposed assessment of additional **tax in** the amount of \$597.61, plus interest, **for** the year 1973, based upon its recomputation of the tax due on such income. Appellants paid the proposed assessment without protest.

Thereafter respondent received an Internal Revenue Service report showing audit adjustments made to appellants' federal income tax returns for 1972, 1973, and 1974. On November 5, 1976, respondent issued notices of proposed assessment for taxable years 1972 and 1973 based upon the federal adjustments. Appellants protested only the deficiency assessment for 1973, and respondent's denial of that protest gave rise to this appeal.

Appellants argue that the second deficiency assessment **issued against them by respondent for 1973** was **improper** because respondent had already audited their return for that year and had issued a previous deficiency assessment. Appellants state that they did not agree with that earlier assessment, but they nevertheless paid it because they understood that their account with respondent for 1973 would then be closed. In that regard, they contend they have been advised by counsel that respondent's second assessment "constitutes Res Judicata and thereby exceeds the Statute of Limitation."

It is well settled that the Personal Income Tax Law expressly authorizes respondent to propose a second deficiency assessment for a particular taxable year, even after a previous assessment issued for the same year has been paid. (Appeal of James T. and Janice Sennett, Cal. St. Bd. of Equal., Sept. 28, 1977; Appeal of J. H. Hoeppel, Cal. St. Bd. of Equal., Feb. 26, 1962; Appeal of Louis Hozz and Ettie Hozz, Cal. St. Bd. of Equal., March 30, 1944; see also Rev. & Tax. Code, §§ 18583 and 18584.) Accepting payment for one assessment does not extinguish respondent's power to issue subsequent timely assessments for the same

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taxable year. The propriety of any deficiency assessment depends solely upon its own validity and not upon whether a prior assessment has been paid.

In this case respondent's second proposed assessment for 1973 was clearly timely, as it was issued on November 5, 1976, well within the statutory period for the issuance of a deficiency assessment for that taxable year. (See Rev. & Tax. code, § 18586.) Appellants have made no effort to establish error in the federal adjustments upon which that second assessment was based. Under the circumstances, we are forced to conclude that respondent's determination of additional tax due for 1973 was correct and must be upheld.

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 Robert F. and Clara B. Pyle against a proposed assessment of additional personal income tax in the amount of **\$1,229.01** for the year 1973, be and the same is hereby sustained.

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

Halvinge Bennett Chairman
Christ Novemburg , Member
Robert Horn , Member
Charles Helly , Member
_____, Member