

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KENNETH R. WALDROFF }

Appearances:

For Appellant:	Kenneth R. Waldroff, 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 Kenneth R. Waldroff against a proposed assessment of additional personal income tax in the amount of \$229.38 for the year 1975.

Appeal of Kenneth R. Waldroff

Following receipt of appellant's state income tax return for 1975, respondent disallowed several deductions appellant had claimed, and assessed a deficiency which appellant paid without protest. Subsequently, the Internal Revenue Service informed respondent that it had partially disallowed numerous other deductions claimed on appellant's 1975 federal return. Respondent then made corresponding adjustments to appellant's state return and proposed a second deficiency assessment for 1975. Appellant protested this second deficiency, on the ground that respondent is, barred from issuing more than one assessment against a taxpayer for the same year, and has appealed respondent's denial of his protest. On appeal, appellant has reiterated the same objection to the second assessment.

As we said in the Appeal of James T. and Janice Sennett, decided by this board on September 28, 1977:

It is well settled that the Personal Income Tax Law expressly authorizes respondent to propose a second deficiency assessment even after a former assessment for the same year has been paid. (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, §§ 18593 and 18594.) Accepting payment for one assessment does not extinguish respondent's power to issue subsequent timely assessments for the same year. The propriety of any assessment depends solely upon its own validity and not upon whether a prior assessment has been paid.

It is equally well settled that a Franchise Tax Board determination based upon a federal audit report is presumptively correct, and that the burden is on the taxpayer to overcome that presumption. (Todd v. McCorgan, 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.) Although appellant was granted ample time by this board to produce evidence in support of his allegation -that the federal determination was incorrect, he failed to avail himself of the opportunity. Under the circumstances, we hold that appellant has not met his burden of proof, and that respondent's assessment must be sustained.

Anneal of Kenneth R. Waldroff

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 Kenneth R. Waldroff against a proposed assessment of additional personal income tax in the amount of \$229.38 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of November, 1979, by the State Board of Equalization.

William L. Benson, Chairman
Paul J. [unclear], Member
Ernest [unclear], Member
[unclear], Member
Geoff [unclear], Member