

Appeal of Excel and Veronica L. Hunter

.This sole question presented is whether respondent's deficiency assessment, which was based upon a federal audit report, is **correct**.

Appellants' 1974 federal income tax return was audited by the Internal Revenue Service; resulting in the disallowance, for lack of substantiation, of a portion of their claimed deductions for charitable contributions, interest expense, sales tax and medical expenses. Upon receipt of the federal audit report, respondent issued its notice of proposed assessment of additional tax based entirely upon the federal adjustments.

Appellants' only contention at the protest level, and in its appeal to this board, is that the "taxable income" figure shown on respondent's notice of proposed assessment is different than the amount of taxable income shown by the Internal Revenue Service on its notice **of the adjustments** made to appellants' federal return for 1974.

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. (Appeal of Khristi A. Shultz, Cal. St. Bd. of Equal., Sept. 27, 1978; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 7, 1959.) The taxpayer cannot merely assert the incorrectness of an assessment and thereby shift the burden to respondent to justify the tax and the correctness thereof. (Todd v. McColgan, 89 **Cal. App. 2d 509 [201 P.2d 414]** (1949); Appeal of Samuel and Ruth Reisman, Cal. St. Bd. of Equal., March 22, 1971.)

Appellants herein have made no attempt to establish error in the federal determination or in respondent's assessment based **thereon**. **Although it** is true, as they have pointed out, that there is a discrepancy between the **amounts** of their 1974 "taxable income" for federal and state income tax purposes, this discrepancy is the result of differences in the methods of computing "taxable income" **under the**

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two distinct tax laws. Respondent's upward adjustment of appellants' reported taxable income for 1974 appears to be in complete conformity with the federal audit adjustments and with California law. Since appellants have failed to show error in either the federal determination or in respondent's assessment based thereon, 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 Excel and Veronica L. Hunter against a proposed assessment of additional personal income tax in the amount of \$323.68 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of December , 1979; by the State Board of Equalization.

William M. Bennett, Chairman
Dudley Horn, Member
Robert Brey, Member
_____, Member
_____, Member