

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 Ann Schifano against a proposed assessment of additional personal income tax and penalties in the total amount of \$3,680.77 for the year 1963.

Appellant was married to Anthony J. Schifano during 11 of 1963, but because of marital difficulties they lived in separate homes during that year. They were divorced in 1969. Although appellant and her husband, filed separate federal income tax returns for 1963, neither spouse filed a California personal income tax return for that year. Both federal returns were audited by the Internal Revenue Service, and the revenue agent increased the spouses' interest and business income in the total amount of \$64,851.71. Business adjustments were made for sales, purchases, auto and truck expenses, bad debt expense, entertainment expense and miscellaneous expense. One-half of the additional income was allocated to each spouse by the separate audit reports prepared for appellant and her husband. After receiving copies of these audit reports, respondent issued to both spouses notices of proposed assessment based on the income and

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adjustments contained in the reports. Total taxable income included in appellant's notice was \$47,948.07. Penalties for failure to file a timely return and for negligence were added to the tax proposed in the notice. Appellant protested the assessment of tax and penalties, and she appeals from respondent's denial of her protest.

Like other determinations made by respondent, a determination based on a federal audit report, is presumptively correct and the taxpayer has the burden of showing that it is erroneous. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414]; Appeal of Hugh S. and Barbara L. Jennings, Cal. St. Bd. of Equal., April 7, 1970; Appeal of Boris S. Stanley, Cal. St. Bd. of Equal., Dec. 7, 1970.) Appellant has not challenged the correctness of the federal report or the propriety of the penalties imposed by respondent. Rather, her contentions are that her husband gave her only a flat weekly amount for her living expenses in 1963, that she never received any of the additional income giving rise to this assessment, that she was unaware of Mr. Schifano's business transactions and the substantial income which he derived from them, that she cannot afford to pay the assessment here in question, and that her former husband refuses to discuss these matters with her.

In two earlier appeals, we rejected similar arguments on similar facts. (Appeal of Esther Zoller, Cal. St. Bd. of Equal., Dec. 13, 1960; Appeal of Beverly Bortin, Cal. St. Bd. of Equal., Aug. 1, 1966.) Both cases discussed the California community property law set forth in the Civil Code and firmly established the principle that a wife is liable for income tax on her one-half community interest in the earnings of her husband. Both cases also held that the wife's liability is not affected by the fact, that she lived separate and apart from her husband during the year in question, and Zoller held that the wife's liability was not changed by the fact that she received none of her husband's earnings. Since no reason appears for deviating from the rule of those cases, we adhere to it and dispose of the 'present appeal on' that basis.

