

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
DONALD D. AND VIRGINIA C. SMITH)

For Appellants: Rodney Robertson
 Attorney at Law

For Respondent: Crawford H. Thomas
 Chief Counsel

Marvin J. Halpern
Counsel

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 Donald D. and Virginia C. Smith against a proposed assessment of additional personal income tax in the amount of \$5,132.75 for the year 1964.

Appellants filed a 1964 joint California income tax return showing a taxable income of \$5,988.06. Subsequently, appellants' federal return for 1964 was audited,

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'and in an examination report dated June 21, 1968, the Internal Revenue Service advised appellants of certain adjustments to their gross income. Appellants did not inform respondent who remained unaware of the changes until it received a copy of the examination report from the Internal Revenue Service on June 11, 1970. Pursuant to this report, respondent issued a Notice of Additional Tax Proposed to be Assessed on July 15, 1970.

In a letter dated July 29, 1970, appellants **protested** the proposed assessment and requested that respondent take no action until their federal tax liability was resolved. Subsequently, appellants entered into an agreement with the Internal Revenue Service and on January 15, 1971, the United States Tax Court entered its decision based on that agreement. Appellants did not inform respondent of the settlement, however, until March 20, 1972. Respondent then revised its original assessment in accordance with the settlement agreement and issued a revised notice to appellants on April 14, 1972. This appeal followed.

The first issue is whether respondent's action in issuing a deficiency assessment was proper when based upon the result of a federal determination of additional income for 1964.

Section 18451 of the Revenue and Taxation Code ^{1/} provides **in** relevant part that where the Commissioner **of** Internal Revenue changes or corrects the amount of gross income reported in the taxpayer's federal return and where the change or correction has an impact on the taxpayer's California tax liability, the taxpayer shall concede the accuracy of such determination or state wherein it is erroneous. This board has consistently

^{1/} Unless otherwise noted, all statutory references herein refer to the Revenue and Taxation Code.

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held that a determination by respondent based upon the results of a federal audit is presumed to be correct, and the burden of proof is on the taxpayer to show that it is erroneous. (Appeal of Harry and Tessie Somers, Cal. St. Bd. of Equal., March 25, 1968; Appeal of J. Morris and Leila G. Forbes, Cal. St. Bd. of Equal., Aug. 7, 1967.)

On this issue appellants asserted that the money in question **was** a gift and not earned income. However, appellants offered no evidence in support of this bare assertion. Appellants also contended that they were "coerced" by the federal government into entering into the agreement upon which respondent's determination was based. Even if true, this assertion explains only appellants' motivation for entering into the settlement. It has no bearing on whether the federal determination was correct. In view of appellants' failure to offer any evidence to dispute respondent's determination, the propriety of the determination must be upheld unless a procedural defect exists.

Appellants argue that such procedural infirmity does exist. They contend that under the provisions of section 18586 respondent's assessment is barred. Section 18586 provides that, except as otherwise expressly provided, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. However, appellants' contention fails to consider the exception provided in sections 18451 and 18586.2. Section 18451 states that if the federal authorities make any change in a taxpayer's reported gross income or deductions and if the change affects the taxpayer's California tax liability, then the taxpayer must report that change to the Franchise Tax Board within 90 days after its final federal determination. Where the taxpayer fails to report such change, section 18586.2 provides that a notice of proposed deficiency assessment resulting from such adjustment may be mailed to the taxpayer within four years after the change or correction is reported to the federal government. The change was reported to the federal govern-

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ment and appellants were informed of the adjustment in a report dated June 21, 1968. Respondent was not informed until June 11, 1970, and then not by appellants but by the Internal Revenue Service. As appellants have clearly failed to comply with the reporting requirements of section 18451, the four-year statute of limitations provided by section 18586.2 applies. We therefore conclude that the notice of July 15, 1970, was timely.

Finally, appellants contend that respondent is estopped from assessing additional tax because of respondent's failure to act on appellants' protest prior to April 14, 1972. However, in a letter dated July 29, 1970, appellants requested that respondent take no action on the proposed assessment until the issue of their federal tax liability had been resolved. In **light of** that request, it is difficult to see how appellants could have relied to their detriment upon respondent's inaction. It is readily apparent that the facts do not raise an estoppel against respondent.

Accordingly, we find that respondent's determination 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,

