

Appeal of Arthur A. and Dorothy L. Reynolds

Following an audit of the joint personal income tax return filed by appellant Arthur Reynolds and his former wife, Barbara, for the taxable year 1969, respondent issued a deficiency assessment against them in the amount of \$111. 79, plus interest. On January 17, 1973, appellant Dorothy Reynolds paid respondent \$65. 12 of the total amount, leaving a balance outstanding of \$65.86.

For 1972, appellants filed a timely joint personal income tax return wherein they claimed a refund in the amount of \$198.00. Respondent approved appellants' calculations of their tax liability, but in making the refund it withheld the \$65.86 still owed by Arthur and Barbara on their deficiency assessment for 1969. The propriety of respondent's action in withholding this amount from appellants' refund is the issue for our determination.

Appellants contend that Arthur's half of the joint 1969 deficiency assessment against him and Barbara was satisfied when Dorothy paid respondent \$65.12 on January 17, 1973. They argue that Barbara miscalculated the tax on the return and therefore she and not appellants should be liable for the \$65.86 in question, especially since she is currently a wage earner capable of paying her own' debts.

While we sympathize with appellants, there is no legal merit in their position. The law is clear that where a joint return is filed, the tax liability on the aggregate income is joint and several. (Rev. & Tax. Code, § 18555.) Furthermore, it is within respondent's discretion to assert this tax liability against either spouse, regardless of his or her financial condition.' (See Appeal of Hilde H. Anders, formerly Hilde H. Lewin, Cal. St.' Bd. of Equal., Feb. 26, 1969.)

Based on the foregoing, it is clear that Arthur was liable for the full amount of the joint deficiency assessment against him and Barbara for 1969. The only question remaining is whether the \$198.00 claimed by appellants as a refund, which undisputedly constituted community property to them, was properly subject to the tax liability incurred by Arthur prior to his marriage to Dorothy. With certain minor exceptions not relevant here, community property in California is subject to the debts of the husband incurred prior to marriage. (See Weinberg v. Weinberg, 67 Cal. 2d 557 [63 Cal. Rptr. 13, 432 P. 2d 709].) Accordingly, respondent's reduction of the refund otherwise due appellants by the amount of Arthur's "debt" of \$65.86 was proper.

Anneal of Arthur A. and Dorothy L. Reynolds

ORDER

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Arthur A. and Dorothy L. Reynolds for refund of personal income tax in the amount of \$65.86 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of March, 1975, by the State Board of Equalization.

John W. Lynch Chairman
William B. ... Member
George ... Member
Paul ... Member
_____, Member

ATTEST: Charles H. Ottman, Acting Secretary