



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CASPER W. AND SVEA SMITH)

For Appellants: Gerald A. W. Haight
Attorney at Law

For Respondent: Bruce W. Walker
Chief Counsel

Kathleen M. Morris
Counsel

OPINION

This appeal is made pursuant to sections 1.8646 and 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the petition of Casper W. and Svea Smith for reassessment of a jeopardy assessment of personal

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income tax in the amount of \$74. 63 and a penalty in the amount of \$3.73 for the year 1967. 1/

The issue presented is the propriety of the respondent Franchise Tax Board's jeopardy assessment which is based upon a federal audit report.

Appellants, California residents, did not file a California personal income tax return for the year 1967. On June 22, 1973, respondent issued a jeopardy assessment of state income tax against appellants for 1967, and added a 5 percent penalty for negligence. This assessment was based upon a federal audit report concerning appellants' federal income tax liability for 1967. The federal report also included a 5 percent penalty for negligence pursuant to section 6653(a) of the Internal Revenue Code of 1954. Appellants filed a timely petition for reassessment with respondent. The jeopardy assessment was affirmed, and this appeal followed.

Appellants contend that they do not owe the amount in question. They also are of the opinion that the assessment was barred by the statute of limitations.

It is well established that a deficiency assessment issued by respondent on the basis of a federal audit report is presumed to be correct, and the burden is on the taxpayer to show otherwise. (Appeal of Harry and Tessie Somers, Cal. St. Bd. of Equal., March 25, 1968; Appeal of Precious Frank Thompson, Cal. St. Bd. of Equal., Sept. 17, 1975; Appeal of Horace H. and Mildred E. Hubbard, Cal. St. Bd. of Equal., Dec. 13, 1962; see also Rev. & Tax. Code, § 18451.) This

1/ The Cappy Smith Company, an Oregon corporation, of which appellants are stockholders, also attempted to appeal the denial of its petitions for reassessment of franchise tax and penalties in the total amount of \$7,343.58 for the taxable years 1966 through 1973. However, its corporate powers have been forfeited since September 15, 1972. Therefore, it was without authority to appeal. (Appeal of Celeron Realty Corp., Cal. St. Bd. of Equal., Aug. 7, 1963; see Rev. & Tax. Code, § 23301.)

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presumption also applies with respect to the imposition of a negligence penalty under section 18684 of the Revenue and Taxation Code. (Appeal of Elmer H. and Joan C. Thomassen, Cal. St. Bd. of Equal., Feb. 19, 1974; Appeal of Harry and Tessie Somers, supra; Appeal of Robert R. Ramlose, Cal. St. Bd. of Equal. , Dec. 7, 1970.) Appellants have offered no evidence indicating that the federal adjustments were incorrect.

Moreover, with respect to appellants' contention that the assessment was barred by the statute of limitations, if a taxpayer fails to file a return, the Franchise Tax Board, at any time, may assess the amount of tax and penalties due under the law. (See Rev. & Tax. Code, § 18648.) Therefore, this assessment was not barred by the statute of limitations.

Accordingly, so far as can be discerned from the record, the adjustments made by respondent were both proper and timely. We have no choice but to sustain respondent's action.

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,

