76-SBE-068

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
PATRICIA A. GREEN)

For Appellant: Dominic F. Meo
Tax and Business Consultant

For Respondent: James W. Hamilton
Acting Chief Counsel

Steven S. Bronson
Counsel

0 PINION

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 Patricia A. Green against a proposed assessment of additional personal income tax in the amount of $366.89 for the year 1970.

Appellant and her husband, Robert D. Green, filed a joint California personal income tax return for the year 1970. Subsequently, they filed an amended return for that year showing a $217.00 tax overpayment. During its investigation of the claimed tax overpayment, respondent determined that. appellant and her husband were not entitled to file a joint return for 1970. Consequently, respondent segregated the spouses' individual incomes for that year and computed their respective tax liabilities on separate bases.

In computing the separate tax liability of Mr. Green for the year 1.970, respondent applied as a credit against that liability the taxes which had been paid by the spouses with their original 1970 return. As a result, respondent determined that Mr. Green was entitled to a tax refund in the amount of $142.67. However, apparently intending to transfer $74.00 of that refund as a credit against appellant's separate tax liability for the year in question, respondent reduced to $68. 67 the refund actually paid to Mr. Green.

In computing the separate tax liability of appellant for 1970, respondent initially determined that appellant owed additional tax in the amount of $526.32. After notifying appellant of its proposed assessment for that amount, respondent reduced the' assessment to $366.89. Appellant protested the revised assessment and this appeal followed.

The memorandum filed on appellant's 'behalf and in support of her position on appeal does not contain a definitive statement of the grounds for the appeal. For that reason, we are unable to determine the precise nature of appellant's objection to the proposed assessment. In this regard we note that respondent's determination of a tax deficiency, and its proposed assessment based thereon, is presumed to be correct. The burden is upon the taxpayer to prove that respondent's action is erroneous or improper, (Appeal of Robert C. Sherwood, Deceased, and Irene Sherwood, Cal. St. Bd. of Equal. ,Nov. 30, 1965; Appeal of Charles R. Penington, Cal. St. Bd. of Equal. , Jan. 20, 1954.) Initially, in order to sustain that burden, it is incumbent on the taxpayer to submit a detailed statement of the facts and circumstances which form the basis of the appeal. This appellant has not done.

With respect to the instant appeal, we suspect that appellant's primary contention is that respondent improperly denied her joint filing status for the year 1970. Respondent's decision in this regard was made pursuant to section 18402 of the Revenue and Taxation Code, which provides that a husband and wife may not file a joint return "if one spouse was a resident for the entire year and the other spouse was a nonresident for all or any portion of the taxable year. "

Prior to 1969, appellant and her husband resided in the State of Kansas. In July 1969, Mr. Green was transferred to California by his employer. However, appellant did-not join her husband in California until July 1970, upon completion of her employment in Kansas as a high school teacher for the 1969-1970 school year. Thus, the record on appeal indicates that while Mr. Green was a resident of California for the entire year 1970, appellant did not become a resident of California prior to July 1970. Therefore, we must conclude, on the basis of section 18402 of the Revenue and Taxation Code, that respondent's action in denying appellant joint filing status for the year 1970 was proper.

Accordingly, for the reasons stated above, we conclude that appellant has not sustained her burden of proving that the proposed assessment was erroneously or improperly issued. We do note, however, that in computing the separate tax liability of appellant for the year 1970, respondent inadvertently failed to apply the previously described $74.00 tax overpayment as an offset or credit against appellant's tax liability. Therefore, the proposed assessment on appeal must be reduced by the amount of $74.00.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Patricia A. Green

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 Patricia A. Green against a proposed assessment of additional personal income tax-in the amount of $366.89 for the year 1970, be and the same is hereby modified to reflect an offset against the proposed assessment in the amount of $74.00. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 22nd day of June, 1976, by-the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____ Member

ATTEST: _____, Executive Secretary