



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WING E. AND FAYE D. LEW)

Appearances:

For Appellants: Wing E. and Faye D. Lew,
in pro. per.

For Respondent: Paul J. Petrozzi
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 Wing E. and Faye D. Lew against a proposed assessment of additional personal income tax and penalty in the total amount of \$26.24 for the year 1972 and on the protest of Wing E. Lew against a proposed assessment of additional personal income tax in the amount of \$743.60 for the year 1974.

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Appellants, husband and wife, filed joint federal and California personal income tax returns for the year 1972. An Internal Revenue Service audit of the federal return resulted in the disallowance of certain deductions and a corresponding increase in appellants' taxable income. Respondent proposed an assessment of additional tax for the year 1972 on the basis of the federal adjustments. Respondent also imposed a five percent negligence penalty pursuant to section 18684 of the Revenue and Taxation Code.

Thereafter, respondent discovered that appellant Wing E. Lew failed to file a California return for the year 1974. Accordingly, on the basis of information provided by Mr. Lew's employer and others, respondent reconstructed Mr. Lew's 1974 income and issued a **deficiency** assessment for that year.

This appeal involves the propriety of respondent's actions in issuing a proposed assessment for the year 1972 on the basis of the corresponding federal action, in imposing a five percent negligence penalty for the year 1972, and in reconstructing Mr. Lew's 1974 income.

It is well established that a proposed assessment issued by respondent on the basis of similar federal action **is presumed to be correct, and the burden is on the taxpayer to prove it erroneous.** (Rev. & Tax. Code, § 18451; Todd v. McColgan, 89 Cal. App. 2d 509, 514 [201 P.2d 414] (1949); Appeal of Earle J. and Mildred H. Fischer, Cal. St. Bd. of Equal., April 6, 1978.) In the instant case, appellants have failed to **present** any concrete evidence in support of their general assertion that respondent's action was improper. The record on appeal does contain copies of several hundred handwritten letters sent by Mr. Lew to various employees of the Internal Revenue Service, respondent, and this board. However, **in** none of the letters does Mr. Lew set forth a clear statement of the facts and circumstances surrounding the federal adjustments. Thus, we have no way of ascertaining from the information provided by appellants the precise nature and amounts of the federal adjustments or whether such adjustments were proper. Accordingly, we must conclude that appellants have failed to sustain their burden of proving that respondent erred in following the federal action.

The letters provided by appellants indicate that they challenged the federal adjustments to their

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1972 income in the United States Tax Court. Apparently, appellants are under the impression that the decision of the Tax Court in that case is still pending. However, at the request of this board, the Internal Revenue Service forwarded a copy of an unpublished stipulated judgment of the Tax Court entered on June 30, 1976. In the judgment the court ordered, pursuant to an agreement reached between the appellants and the Internal Revenue Service, that "there are deficiencies in income taxes due from the petitioners [appellants] for the taxable years 1970, 1971 and 1972 in the respective amounts of \$1,232.41, \$420.58 and \$520.36." On the basis of this information, and in the absence of any evidence to the contrary, we conclude that appellants do not have a current court action pending at the federal level regarding their 1972 federal income tax liability.

Section 18684 of the Revenue and Taxation Code provides for the assessment of a five percent penalty where "any part of any deficiency is due to negligence." As is the case with a deficiency assessment, the burden is on the taxpayer to prove that a section 18684 penalty has been improperly assessed. (Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) In the instant case, appellants have failed to present any evidence or argument in opposition to the negligence penalty assessed for the year 1972. Accordingly, we must conclude that appellants have also failed to sustain their burden of proving that respondent's action in assessing the penalty was improper.

Finally, section 18648 of the Revenue and Taxation Code provides that where a taxpayer fails to file a return, respondent may estimate the taxpayer's net income from any available information and assess the tax due accordingly. Moreover, respondent's determination of a deficiency under section 18648 is presumptively correct, and the burden is on the taxpayer to prove it erroneous. (Appeal of John and Codelle Perez, Cal. St. Bd. of Equal., Feb. 16, 1971.) Mr. Lew has made no effort to refute respondent's reconstruction of his 1974 income. Therefore, we must conclude that Mr. Lew has failed to sustain his burden of proof in this regard.

In summary, appellants have asked this board to reverse certain actions taken by respondent with respect to appellants' 1972 tax liability and Mr. Lew's 1974 tax liability on the ground that such actions were improper. However, appellants have failed to provide any meaningful evidence whatsoever in support of their request. Consequently, it is our opinion that respondent's actions in these matters should be sustained.

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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,

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 Wing E. and Faye D. Lew against a proposed assessment of additional personal income tax and penalty in the total amount of \$26.24 for the year 1972 and on the protest of Wing E. Lew against a proposed assessment of additional personal income tax in the amount of \$743.60 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 25th day of August , 1978, by the State Board of Equalization.

Edward Peccy, Chairman
Paul O'Keefe, Member
Iris Bentley, Member
William W. Bunn, Member
_____, Member