

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
SOLOMON AND ELEANOR SCHALMAN)

For Appellants: Solomon Schalman, *in pro. per.*

For Respondent: Bruce W. Walker
Chief Counsel

John R. Akin
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 Solomon and Eleanor Schalman against a **proposed** assessment of additional personal income tax in the amount of **\$7,652.49** for the year 1968.

Appeal of Solomon and Eleanor Schalman

The sole issue for resolution is whether respondent's determination which was based on corresponding federal action was erroneous.

Appellants' 1968 federal personal income tax return was audited by the Internal Revenue Service in 1971. The audit resulted in a substantial increase to appellants' income resulting from Mr. Schalman's interest in two partnerships. Appellants agreed to the adjustment relating to one of the partnerships, but protested the adjustment arising from their interest in the second partnership. Ultimately, when it was determined that the availability of a net operating loss carryover would result in no federal tax due for the year 1968, appellants acquiesced in the adjustments proposed by the Internal Revenue Service.

Thereafter, respondent issued its notice of proposed assessment which was based upon the final federal determination to the extent applicable under California law. Since California has no provision for a net operating loss carryover, the adjustments, which at the federal level produced no deficiency, resulted in the \$71652.49 deficiency in California personal income tax presently in controversy.

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 that it is erroneous. (Rev. & Tax. Code, § 18451; Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 4141 (1949)]; Appeal of Jackson Appliance, Inc., Cal. St. Bd. of Equal., Nov. 6, 1970.) In opposing this principle, appellants argue that they agreed to the final federal determination without admitting to the validity of the deficiency which gave rise to the adjustment. Appellants point out that, since the net operating loss carryover wiped out the deficiency, sound business judgment dictated a settlement with the federal authorities. The fact that appellants agreed to the federal determination because of the availability of a net operating loss carryover merely explains their motivation for entering into the agreement. It has no bearing on whether the federal determination was correct. In similar appeals, where the federal adjustment did not result in substantial federal tax liability because of a net operating loss carryover, we have held that the presumption of correctness attached to the assessment. (See, e.g., Appeal of J. Douglas White, Cal. St. Bd. of Equal., April 5, 1976; Appeal of Jackson Appliance, Inc., supra.)

Appeal of Solomon and Eleanor Schalman

In the instant appeal, appellants, although maintaining that the federal adjustment with respect to one of the partnerships was erroneous, have failed to offer any evidence tending to show where the federal determination was incorrect. Appellants cannot merely assert that a federal determination of tax is incorrect and thereby shift the burden to justify the tax to respondent. (Todd v. McColgan, supra; Appeal of Samuel and Ruth Reisman, Cal. St. Bd. of Equal., March 22, 1971.) Accordingly, we conclude that respondent's action 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,

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 Solomon and Eleanor Schalman against a proposed assessment of additional personal income tax in the amount of \$7,652.49 for the year 1968, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of September 1978, by the State Board of Equalization.

Geoffrey J. Speck, Chairman
Richard H. Hering, Member
Irving S. Sankey, Member
William H. Burrell, Member
_____, Member