



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
SAMUEL McDANIEL )

For Appellant: Samuel McDaniel, in pro. per.

For Respondent: Bruce W. Walker  
Chief Counsel

Brian W. Toman  
Counsel

OPINION

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 Samuel McDaniel against a proposed assessment of additional personal income tax in the amount of \$104.71 for the year 1973.

Appeal of Samuel McDaniel

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

On his 1973 tax return, appellant claimed certain-itemized deductions for medical expenses, taxes, interest expenses and miscellaneous expenses. He also filed as a head of household for that year. Thereafter, appellant's return was audited by the Internal Revenue Service which disallowed portions of the claimed itemized deductions and disallowed appellant's claimed head of household filing status. Appellant consented to the federal assessment and did not seek to appeal the federal determination. Since the federal changes were applicable under state law, respondent issued its notice of proposed assessment. Appellant's protest was denied and this appeal followed.

Section 18451 of the Revenue and Taxation Code provides, in part, that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a determination by the Franchise Tax Board based on a federal audit is presumed to be correct and the burden is on the taxpayer to overcome that presumption; (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 4143 (1949)]; Appeal of Willard D. and Esther J. Schoellerman, Cal. St. Bd. of Equal., Sept. 17, 1973.) Here, appellant has offered no evidence to indicate that the federal action was erroneous. Therefore, we must conclude that appellant has failed to carry his burden of proof and respondent's determination of additional tax for the year 1973 must be upheld.

