

Appeal of Harry and Judy Griffin

The sole issue for resolution is whether respondent correctly applied federal adjustments in determining appellants' personal income tax liability for the year in question.

In 1976, respondent requested information from appellants pertaining to their petition in the federal tax court where they protested federal adjustments disallowing certain deductions claimed for medical expense, casualty loss, teacher's business expense, and travel expense. Appellants ultimately replied that the issues were settled during an arbitration conference with the Internal Revenue Service (IRS) but that they could not recall receiving any report relating to the conference. Consequently, respondent issued its proposed assessment based upon disallowance of the same deductions. Appellants duly protested but again were unable to locate the final federal audit report. Respondent then affirmed its action and this appeal followed.

Since the appeal, appellants furnished respondent with a copy of a revised federal audit establishing that the net amount originally disallowed in the four deduction categories mentioned above was reduced by \$155.12, i.e., from \$4,933.63 to \$4,778.51. Therefore, respondent agrees that its assessment should be revised to reflect that change.

Appellants continue to claim that they had proceeded with their appeal at the federal level to an arbitration conference where further adjustments were agreed upon but that they have been unable to obtain a copy of the final IRS report. At appellants' request, respondent also inquired of the IRS with respect to the alleged further adjustment but the IRS response indicated that no such conference report was available.

On previous occasions too numerous to cite, we have held that a deficiency assessment based on a federal determination is presumptively correct, (see Rev. & Tax. Code, § 18451), and that the taxpayer has the burden of proving the incorrectness of that determination. (See, e.g., Appeal of Charles A. and Evelyn W. Nemish, Cal. St. Bd. of Equal., June 28, 1979; Appeal of Thomas and Vera Wills, Cal. St. Bd. of Equal., Dec. 15, 1976.) Here, appellants have merely alleged that another federal adjustment was made without providing any evidence of it.

Therefore, other than the revision agreed to by respondent, respondent's determination must be sustained.

