

Appeal of Burton A. and Jeannie A. Marks

Appellants filed joint federal and California income tax returns for the years 1969 and 1970. In March 1972, respondent received a federal audit report showing various adjustments in appellants' reported taxable income for each of those years. On the basis of that report, respondent made corresponding changes in appellants' reported income for state income tax purposes, insofar as the federal adjustments were applicable under California law. The resulting notices of proposed assessment of additional tax for the years 1969 and 1970 were issued by respondent on September 15, 1972. Appellants filed a timely protest against those deficiency assessments, advising respondent that they were contesting the federal adjustments and requesting that further action on their protest be deferred pending a final federal determination. Respondent acquiesced in that request.

Early in 1978, respondent received a copy of the final settlement reached between the Internal Revenue Service and appellants with respect to their federal income tax liability for 1969 and 1970. Respondent reduced its initial deficiency assessments for those years in accordance with the final federal determination and issued notices of action on appellants' protest, affirming the net adjustments. This timely appeal followed.

In support of their position, appellants make vague allusions to error in both respondent's deficiency **assessments and in the corresponding federal action**. They also contend that respondent's assessments were untimely and, since they had not agreed to any extension of the assessment period, were thus barred by the statute of limitations.

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 deficiency assessment issued by respondent on the basis of a federal audit is presumed to be correct, and the taxpayer bears the burden of proving error in respondent's determination. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 4141 (1949)]; Appeal of Khristi A. Shultz, Cal. St. Bd. of Equal., Sept. 27, 1978; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.) The taxpayer cannot merely assert the incorrectness of an assessment and thereby shift the burden to respondent to justify the tax and the correctness thereof. (See Todd v. McColgan, supra; Appeal of Excel and Veronica L. Hunter, Cal. St. Bd. of Equal., Dec. 11, 1979; Appeal of Thomas L. and Wylma Gore, Cal. St. Bd. of Equal., Dec. 11, 1973.)

