

Appeal of Thomas William Nichols

The sole question presented is whether appellant has established error in respondent's deficiency assessment, which is based upon federal audit adjustments.

The Internal Revenue Service audited appellant's 1975 federal income tax return and made several adjustments, including the disallowance of portions of his claimed deductions for charitable contributions and educational expenses. Appellant apparently paid the resulting federal deficiency assessment. Upon receipt of a copy of the federal audit report, respondent made corresponding adjustments in appellant's reported taxable income for state income tax purposes for 1975 and issued a notice of proposed assessment. In his protest against that deficiency assessment, appellant stated that he recently had provided the Internal Revenue Service With additional proof of his claimed educational expenses and he expected a federal adjustment in his favor.

Subsequently respondent received a copy of the final federal audit report, showing a reduction in the amount of additional tax previously assessed for 1975. Appellant indicated his consent to the federal determination by signing the audit report. As a result of that determination, appellant states he received a federal refund in the amount of \$11.51. Respondent made corresponding adjustments in its original proposed assessment for 1975 and affirmed the remainder of the deficiency. 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 an assessment issued by respondent on the basis of 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 414] (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.)

Appellant has offered no evidence to indicate that the final federal determination was erroneous. Rather, he appears to be contending that since he ultimately received a refund from the Internal Revenue Service for 1975, he should not owe any additional tax to the State of California for that year. We find no merit in this contention.

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The initial federal deficiency for 1975 apparently was paid by appellant. Therefore, when the Internal Revenue Service reduced that assessment, appellant was entitled to a refund of the amount he had overpaid. A different situation exists, however, with respect to the state assessment. Appellant had never paid any of respondent's initial proposed assessment. Thus, although the downward adjustment made by respondent in conformity with the federal action served to reduce that assessment, it did not cancel it entirely.

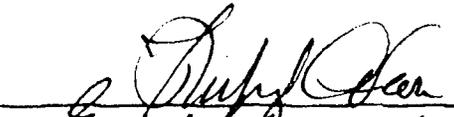
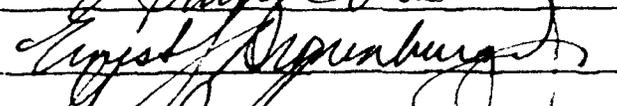
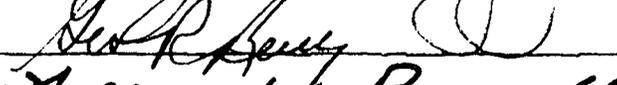
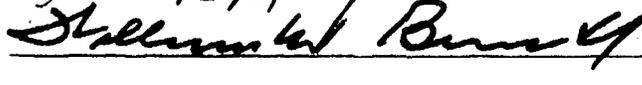
In view of his failure to show error in either the final federal determination or in respondent's assessment based thereon, we must conclude that appellant has not carried his burden of proof, and respondent's action in this matter must therefore be sustained.

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 Thomas William Nichols against a proposed assessment of additional personal income tax in the amount of \$54.90 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of May, 1980, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member'