



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
VERA RALSTON YATES)

Appearances:

For Appellant: Steven S. Glick
Certified Public Accountant

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Vera Ralston Yates against a proposed assessment of additional personal income tax in the amount of \$2,616.55 for the year 1966.

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On October 18, 1976, respondent issued the subject deficiency assessment in reliance upon a federal audit adjustment which had been sustained by the U.S. Tax Court. Specifically, respondent adopted the federal audit adjustment including in appellant's 1966 income a \$40,000 distribution to her from the estate of her late husband, Herbert J. Yates.

The issues presented for determination are: (i) whether the proposed assessment is barred by the statute of limitations; and (ii) if not, whether all or any part of the distribution from the estate should be excluded from appellant's income.

Appellant, ^{1/}relying upon Revenue and Taxation Code. section 18586, ^{1/} contends that the proposed assessment is barred by the statute of limitations in that it was issued more than four years after the due date of her return. A review of the relevant statutes reveals that appellant's argument is without merit.

The basic statute of limitations for deficiency assessments is found in section 18586, which provides:

Except in case of a fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise fixed. (Emphasis added.)

Section 18586.3 provides, in pertinent part:

If a taxpayer is required to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or to file an amended return as required by Section 18451 and does report such change or files such return, a notice of proposed deficiency assessment resulting from such adjustments may be mailed to the taxpayer within six months from the date when such notice or amended return is filed with the Franchise Tax Board by the taxpayer

^{1/} Hereinafter, all references are to the Revenue and Taxation Code.

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Section 18586.2 provides:

If a taxpayer shall fail to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or shall fail to file an amended return as required by Section 18451, a notice of proposed deficiency assessment resulting from such adjustment may be mailed to the taxpayer within four years after said change, correction or amended return is reported to or filed with the Federal Government.

Insofar as pertinent to the instant appeal, section 18451 requires taxpayers to notify respondent of any federal adjustments to their gross income or deductions within 90 days of the final determination of such adjustments.

The record of this appeal does not indicate when the final federal determination of the adjustment to appellant's gross income was issued. Consequently, it is impossible to ascertain whether appellant's September 17, 1976 notification to respondent of such final determination was within the 90 day period required by section 18451. It is known, however, that the U.S. Tax Court upheld the federal deficiency sometime in 1976. Regardless of whether appellant's notification to respondent was timely, the subject proposed assessment is not barred by the statute of limitations. If appellant timely reported the final federal adjustments by virtue of her September 17, 1976 notification to respondent, the issuance of the proposed deficiency assessment on October 18, 1976 was well within the six-month period specified by section 18586.3. Similarly, even if appellant failed to timely notify respondent of the final federal determination of the adjustments to her gross income, respondent's October 18, 1976 issuance of the proposed deficiency assessment was within the four-year statute of limitations period provided by section 18586.2, since it is known that such final federal determination was rendered in 1976.

The second issue presented by this appeal is whether all or any part of the distribution from the estate should be excluded from appellant's income. Appellant contends that the estate 'had no taxable income

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in 1966 and that the \$40,000 distribution was nontaxable income since it was paid out of the estate's corpus. In the alternative, appellant argues that the estate distributed only \$28,953 to her in 1966. Of that amount, she maintains, \$13,538 is deductible for expenses related to the upkeep of her residence.

A deficiency assessment based on a federal audit report is presumptively correct (see Rev. & Tax. Code, § 18451), and the taxpayer bears the burden of proving that respondent's determination is erroneous. (Appeal of Donald G. and Franceen Webb, Cal. St. Bd. of Equal., Aug. 19, 1975; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959.) While appellant has set forth several arguments challenging the federal determination, she has offered no evidence to indicate that it was erroneous. Consequently, appellant has failed to carry her burden of proof and respondent's action in this matter must be sustained.

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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 Vera Ralston Yates against a proposed assessment of additional personal income tax in the amount of **\$2,616.55** for the year 1966 be and the same is hereby sustained.

Done at Sacramento, California, this 30th day of March , 1981, by the State Board of Equalization, with Members Dronenburg, Bennett and Nevins present.

<u>Ernest J. Dronenburg, Jr.</u>	,	Chairman
<u>William M. Bennett</u>	,	Member
<u>Richard Nevins</u>	,	Member
<u>_____</u>	,	Member
<u>_____</u>		Member