81-SBE-180

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
W. E. PURCELL AND BILLIE JEAN PURCELL)

Appearances:

For Appellants: Brad Henschel

For Respondent: Jon Jensen and
John R. Akin
Counsels

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 W. E. Purcell against a proposed assessment of additional personal income tax and penalties in the total amount of $1,622.00 for the year 1977; and on the protest of Billie Jean Purcell against a proposed assessment of additional personal income tax and penalties in the total amount of $445.56 for the year 1977.

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Appeal of W. E. Purcell and Billie Jean Purcell

The issue for determination is whether appellants have established any error in respondent's proposed assessments.

Respondent received information from the California Employment Development Department indicating that in 1977 W. E. Purcell received $18,736.37 in wages from the Southern California Rapid Transit District and that Billie Jean Purcell received $11,035.33 in wages from the City of Sierra Madre, California. Since respondent had no record that appellants had filed returns for that year, appellants were so advised and notified that they must file any required return. When they failed to file any return or adequately explain why they were not required to do so, proposed assessments were issued based on the above-indicated wage information. Additional penalties for failure to file, failure to furnish information upon request, and negligence were also imposed.

Appellants protested, but still did not file any 1977 return. Consequently, the proposed assessments were affirmed and this appeal followed. On appeal respondent notes that a request for information was not issued to appellant Billie Jean Purcell. Accordingly, as to Billie Jean Purcell, respondent withdrew that particular penalty. Respondent also notes that California income tax was withheld from appellants' respective salaries and that credits therefor should be allowed against any tax determined to be due.

It is settled law that respondent's determinations of tax and penalties for failure to file a return are presumptively correct, and that the taxpayer bears the burden of proving them erroneous. (Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Appellants allege that several of their constitutional rights have been violated through the actions taken by the Franchise Tax Board. They even challenge this board's authority under the U.S. and California Constitutions to hear an appeal from those actions. With regard to appellants' claims that constitutional violations are involved in this matter, it is the well-established policy of this board to refrain from deciding constitutional questions in a deficiency assessment case. (Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977; Appeal of David B. and Delores Y. Gibson, Cal. St. Bd. of Equal., April 22, 1975.) Moreover, this

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board, as an administrative agency, is prohibited from declaring statutes unconstitutional. (Cal. Const., art. III, § 3.5.) Even in the absence of these restrictions, however, we would be compelled to find appellant's constitutional arguments as totally without merit.

The only additional arguments made by appellant concern the claim that they are immune from state taxation because they filed a Form W-4E indicating no federal income tax liability; the claim that respondent failed to give appellants an oral hearing; and the claim that respondent made errors in calculating the amount of tax proposed to be assessed.

In regard to the first of these claims, appellants cite no authority in support thereof, and in fact, there appears to be none existing. Moreover, respondent notes that appellants incurred federal income tax liability in both 1976 and 1977, and were, therefore, not even qualified to be exempt from withholding, much less exempt from taxation as they claim. (Former section 18806, subdivision (f)(2)(A) and (B), of the Revenue and Taxation Code.) Under these circumstances, appellants' claim must be determined to be without basis.

The second item, the claimed denial of an oral hearing on a protest, must also be resolved against appellants. An oral hearing will be granted at that stage if a taxpayer makes a request therefor in his protest. (Rev. & Tax. Code, § 18592.) Although appellants protested the proposed assessment, nowhere in their protest did they request an oral hearing. Consequently, there was no requirement that appellants receive an oral hearing at that level and respondent did not act improperly in not providing one.

With regard to the claim concerning purported errors in the calculation of the tax due, we find that claim as well to be meritless. The particular items that appellants cite as being erroneous simply were not so. Rather, they were items fully within all statutory and constitutional requirements and were, therefore, properly reached.

Based on the above, it is our position that appellants have not met their burden of establishing that respondent's actions were erroneous. Accordingly, the proposed assessments and penalties 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 W. E. Purcell against a proposed assessment of additional personal income tax and penalties in the total amount of $1,622.00 for the year 1977; and on the protest of Billie Jean Purcell against a proposed assessment of additional personal income tax and penalties in the total amount of $445.56 for the year 1977, be and the same is hereby modified to allow appellants credit for the tax that was withheld from their wages. In all other respects, the actions of respondent are sustained.

Done at Sacramento, California, this 10th day of December , 1981, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Reilly, Mr. Bennett, Mr. Nevins and Mr. Cory present.

Ernest J. Dronenburg, Jr. , Chairman

George R. Reilly , Member

William M. Bennett , Member

Richard Nevins , Member

Kenneth Cory , Member

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BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
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W. E. PURCELL AND BILLIE JEAN PURCELL)

ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition filed December 31, 1981, by W. E. and Billie Jean Purcell for rehearing of their appeal from the action of the Franchise Tax Board, we are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is hereby ordered that the petition be and the same is hereby denied and that our order of December 10, 1981, be and the same is hereby affirmed.

Done at Sacramento, California, this 18th day of May 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr.Dronenburg, and Mr. Nevins present.

William M. Bennett , Chairman

George R. Reilly , Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

, Member

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