BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	No. 79A-570-PD
KENNETH AND	)	
SAUNDRA P. BLOMSTERBERG	)	

For Appellants: Kenneth Blomsterberg, in pro. per.

For Respondent: Israel Rogers
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Kenneth and Saundra P. Blomsterberg against proposed assessments of additional personal income tax in the amounts of $1,117.40 and $989.70 for the years 1972 and 1973, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

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After auditing the appellants' federal income tax returns for 1972 and 1973, the Internal Revenue Service (IRS) made adjustments in the amounts reported, which increased appellants' federal income taxes for those years. The final federal determinations were dated May 22, 1978. Appellants did not report these changes to respondent. But, as authorized by section 6103(d) of the Internal Revenue Code, the IRS sent respondent a copy of those adjustments. To the extent applicable under the Personal Income Tax Law, respondent applied those changes in its computations of appellants' California income tax liabilities for those years, and, on July 27, 1979, it. issued Notices of Tax Proposed to be Assessed for 1972 and 1973. Appellants protested. Respondent later affirmed its assessments, and this appeal followed. Kenneth and Saundra P. Blomsterberg are no longer married to each other. He filed this appeal. She is considered an appellant because they filed joint returns for 1972 and 1973.

Appellants' position is that, in dealing with the IRS on their federal audit, they were not informed that California would be auditing them for the same years. Had they known, appellants assert, they would have secured copies of their returns for 1968 and 1969 and computed their federal liability for 1972 and 1973 on an income averaging basis. Income averaging.would have reduced their federal liability, which was used as the basis of California's assessment. Consequently, appellants conclude, their California assessment would have been lower than the amounts now on appeal. Furthermore, .in dealing with the IRS, appellants signed waivers permitting the IRS additional time to complete the federal audit without violating the statute of limitations. Appellants have not signed any waivers permitting California additional time to complete the state audit. Appellants also maintain that "interest and penalties" should be deleted.

The determination of a deficiency by a taxing authority is presumed 'to be correct, and the burden is upon the taxpayer to prove that the amount of income to be taxed is an amount less than that on which the deficiency assessment was based. (Kenney v. Commissioner, 111 F.2d 374 (5th Cir. 1940); Appeal of John and Codelle Perez, Cal. St. Bd. of Equal., Feb. 16, 1971.)

In this case, appellants 'do not attack respondent's assessments because they were based on the federal changes. Rather, appellants maintain that income averaging,

if applied to the years at issue, would reduce the amounts of the assessments here being appealed. But that allegation does not demonstrate what those lesser amounts would have been. So, the appellants' allegation does not provide us with proof of the extent to which respondent's determinations were specifically excessive. Accordingly, we cannot conclude from the evidence that the respondent's determinations should be reduced by any specific amounts. Therefore, appellants have failed to meet that burden of proof required of them.

The thrust of appellants' second contention is that respondent's assessment is not timely. As will be explained in the following discussion, appellants' position is in error.

Section 18451 provides, in part:

> If the amount of gross income or deductions for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue ... such taxpayer shall report such change or correction . . . within 90 days after the final determination of such change or correction . . . and shall concede the accuracy of such determination or state wherein it is erroneous.

Section 18586.2 provides, in part:

> If a taxpayer shall fail to report a change or correction by the Commissioner of Internal Revenue ... 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.

Respondent's notices of assessments were issued on July 27, 1979, well within the prescribed four-year limitation period starting with the federal change on May 22, 1978. Under these circumstances, no waiver by appellants was needed to extend the statute of limitation for issuing a deficiency assessment by respondent. (Appeal of George F. and Aida R. Aymann, Cal. St. Bd. of Equal., May 4, 1976.)

Interest charges imposed upon a deficiency pursuant to statute are mandatory. (Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976; Appeal of Barbara J. Walls, Cal. St. Bd. of Equal., Apr. 6, 1978.) The board is without power to waive the imposition of interest. In this case, no penalties were imposed upon appellants by the respondent's assessments.

For the reasons stated above, we have no alternative but to sustain respondent's actions.

Kenneth and Saundra P. Blomsterberg

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 Kenneth and Saundra P. Blomsterberg against proposed assessments of additional personal income tax in the amounts of $1,117.40 and $989.70 for the years 1972 and 1973, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of March, 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Walter Harvey*, Member

_____, Member

*For Kenneth Cory, per Government Code section 7.9