



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRANK AND LAURA J. RANDALL)

For Appellants: Frank Randall, in pro. per,

For Respondent: Burl D. Lack, Chief Counsel ;
Wilbur F. Lavelle, Associate
Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Frank and Laura J. Randall against a proposed assessment of additional personal income tax in the amount of \$9.59 for the year 1958.

Appellants, husband and wife, filed a joint California personal income tax return for the year 1958 showing an adjusted gross income of \$7,120.45. From this amount appellants deducted itemized expenses of \$2,061.57, the personal exemption of \$3,500 for a married couple and exemptions for dependents of \$2,000. Since the total of these deductions exceeded appellants' adjusted gross income, no tax was shown to be due.

Subsequently, the Internal Revenue Service adjusted appellants' taxable income for 1958, resulting in additional federal tax in the amount of \$279.04.

Section 18451 of the Revenue and Taxation Code provides that if the taxable income for any year of any taxpayer is corrected by the Commissioner of Internal Revenue, the taxpayer shall report such corrected taxable income to the Franchise Tax Board within 90 days after the final determination of such change and shall concede the accuracy of such determination or state wherein it is erroneous. On August 11, 1960, respondent requested that appellants submit to it a copy of the federal agent's report. Appellants did not reply to that request and, therefore, on January 25, 1961, respondent issued its notice of proposed assessment which was based upon an estimate of the amount of the federal adjustment to appellants' 1958 taxable income.

In making its computation, respondent assumed that rate of 20 percent. Based on this it estimated that appellants' additional taxable income was approximately \$1,400 ($\$279.04 \times .20 = \1395.20). Since appellants' total deductions exceeded reported adjusted gross income by \$441.12, respondent concluded that for state purposes, appellants' taxable income for 1958 was \$958.88 ($\$1,400$ minus \$441.12).

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Appellants contend that the Franchise Tax Board's assessment is "unfair and unjust." They have not submitted a copy of the federal audit report, as they were requested to do, nor have they stated wherein the federal action is erroneous, as required by section 18451. They have, in fact, offered no explanation or information concerning the instant appeal save their denial of liability.

We have, on two prior occasions, held that a deficiency assessment that is based upon a federal audit report is presumptively correct and it is necessary for the taxpayer to show that it is erroneous. (Appeal of Horace H. and Mildred E. Hubbard, Cal. St. Bd., of Equal., Dec. 13, 1961, CCH Cal. Tax Rep. Par 201-864, 3 P-H State & Local Tax Serv. Cal. Par. 58223; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959, 2 CCH Cal. Tax Cas. Rar. 201-252, 3 P-H State & Local Tax Serv. Cal. Par. 58154.) Recognizing that respondent's assessment in this case cannot be said to be based directly upon a federal audit report, we conclude that the above stated rule is applicable here. A contrary holding would reward appellants for their failure to comply with the clear mandate set out in section 18451. We view respondent's assessment as most reasonable under the circumstances and find that its action was correct.

ORDER

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 Frank and Laura J. **Randall** against a proposed assessment of **additional** personal income, tax in the amount of \$9.59 for the year 1958, be and the same is hereby sustained.

Done at Sacramento, California, this 11th day of December, 1963, by the State Board of Equalization.

John W. Lynch, Chairman

Geo. R. Reilly, Member

Paul R. Leake, Member

Richard Nevins, Member

_____, Member

ATTEST: H. F. Freeman, Secretary