



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
HILDE H, ANDERS, FORMERLY }
HILDE H. LEWIN }

For Appellant: Hilde H. Anders, in pro. per.
For Respondent: Crawford H. Thomas
Chief Counsel
Jack E. Gordon
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 Hilde H. Anders, formerly Hilde H. Lewin, against proposed assessments of additional personal income tax in the amounts of \$9.22 and \$98.04 for the years 1961 and 1962, respectively.

During 1961 and 1962 appellant was married to Theodor Lewin. They filed Joint California income tax returns for these years and both returns were signed by appellant. They also filed joint federal returns which were subsequently audited by the Internal Revenue Service, resulting in additions of previously omitted income from a business known as Continental Caterers. Respondent Franchise Tax Board issued notices of proposed assessment which followed the federal changes. In subsequent correspondence between the parties appellant or her husband stated that the federal changes had been reduced. However no evidence supporting this statement was submitted, and consequently the Franchise Tax Board affirmed its assessments. The issues presented by this appeal are whether the Franchise Tax Board's determination of deficiencies based upon a federal audit report was proper, and whether appellant is liable for payment of the amounts in question.

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Respondent's determination of deficiencies based upon a federal audit report is presumed to be **correct**, and the burden is **on the taxpayer** to show that it is erroneous. (Appeal of Horace H. and Mildred E. Hubbard, Cal. St. Bd. of Equal., Dec. 13, 1961; Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., Feb. 17, 1959; see also Appeal of Frank and Laura J. Randall, Cal. St. Bd. of Equal., Dec. 11, 1963.) In the instant case appellant has not submitted any evidence indicating that respondent's action was erroneous. Nor has she submitted any documentation indicating that the federal changes had been reduced. Consequently appellant has failed to carry her burden and respondent's determination of deficiencies based upon the federal audit report must be upheld.

Appellant contends that she is without funds and is not responsible for the deficiencies at issue. She argues that her former husband is solvent and should be held liable for payment of these amounts. However, section 18555 of the Revenue and Taxation Code explicitly provides in part::
"where a joint return is filed by a husband and wife, the liability for the tax on the aggregate income is joint and several." (Appeal of Robert C. Sherwood, Deceased, and Irene Sherwood, Cal, St, Bd. of Equal ., Nov. 30, 1965; Howell v. Commissioner, 175 F.2d 240.) Therefore respondent could properly choose to assert the liability against the appellant rather than her former husband,

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 Hilde H. Anders, formerly Hilde H. Lewin, against proposed

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assessments of additional personal income tax in the amounts of \$9.22 and \$98.04 for the years 1961 and 1962, respectively, **be** and the same is hereby sustained.

Done at Sacramento, California, this 26th day of February, 1969, by the State Board of Equalization.

John W. Lynch, Chairman
Paul R. Leach, Member
Richard [unclear], Member
_____, Member
_____, Member

Attest: [Signature], Secretary