

Appeal of J. Douglas White

The sole issue presented is the propriety of the respondent Franchise Tax Board's proposed assessment which is based upon a federal audit report.

Appellant, a California resident, filed timely federal and California personal income tax returns for the year 1968. The Internal Revenue Service audited appellant's 1968 federal return, and determined that there was additional taxable income for that year. However, the Service allowed appellant to carryback a 1971 net operating loss, in accordance with section 172 of the Internal Revenue Code of 1954, and this eliminated the proposed federal deficiency.

Respondent adjusted appellant's state income tax liability for 1968 in keeping with the federal audit changes to the extent allowable under California law. Since the California tax law contains no net operating loss carryback provisions, a net tax deficiency for state purposes for the year 1968 resulted. Appellant filed a timely protest. The protest was denied, and this appeal followed.

Appellant contends that he should be entitled to a net operating loss carryback from 1971 to eliminate the state tax deficiency for 1968. However, as already explained, California has no statutory provision allowing the carryback of net operating losses. This board has no power to allow a deduction not authorized under California law.

Moreover, it is well established that a deficiency assessment issued by respondent on the basis of a federal audit report is presumed to be correct, and the burden is on the taxpayer to show otherwise. (Appeal of Edwin R. and Joyce E. Breitman, Cal. St. Bd. of Equal., March 18, 1975; Appeal of Jackson Appliance, Inc., Cal. St. Bd. of Equal., Nov. 6, 1970; Appeal of Jorge and Elena de Quesada, Cal. St. Bd. of Equal., Feb. 5, 1968; Appeal of Harry and Tessie Somers, Cal. St. Bd. of Equal., March 25, 1968; see also Rev. & Tax. Code, § 18451.) This presumption of correctness is not altered by the fact that the proposed federal deficiency was

Appeal of J. Douglas White

eliminated through the application of the federal net operating loss carryback provisions. (See Appeal of Jackson Appliance, Inc., supra; see also Appeal of Jorge and Elena de Quesada, supra.) Appellant has offered no evidence indicating that the federal audit report utilized by respondent is incorrect.

Accordingly, so far as can be discerned from the record, the adjustments made by respondent are proper. We have no choice but to sustain respondent's denial of appellant's protest.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of J. Douglas White

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 J. Douglas White-against a proposed assessment of additional personal income tax in the amount of \$24.08 for the year 1968, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1976, by the State Board of Equalization.

William W. Bennett, Chairman
George R. Bee, Member
Paul Mori I, Member
_____, Member
_____, Member

ATTEST: W. W. Dunlop, Executive Secretary