

Appeal of: John D. and E. Jean Browne

The sole inquiry is whether appellants' 1974 assessment was paid in its entirety. Appellants do not question the propriety of any of respondent's adjustments.

Appellants filed a timely joint California personal income tax return for 1974 on March 24, 1975. Subsequently, in conformance with a federal audit, respondent reduced the deductions appellants claimed for charitable contributions, rental property expenses and medical expenses. The total adjustment increased appellants' taxable income **\$1,839.00**, resulting in additional tax liability of \$73.56. Respondent issued a notice of proposed assessment reflecting this increased tax liability on April 7, 1976.

On April 15, 1976, appellants filed an amended return for 1974 incorporating the federal adjustments reflected in respondent's notice of proposed assessment dated April 7, 1976. In addition, appellants reported a capital gain from the 1974 sale of their residence and claimed certain additional deductions not previously claimed for 1974. The additional tax liability shown on the amended 1974 return was **\$198.32**. At the same time, appellants filed their 1975 return which indicated that their tax withheld exceeded their tax liability by \$142.90. This amount was entered on line 33 of the 1975 return labeled "Refund to You." Appellants also **enclosed** a check for \$55.42 with these returns. It was obviously appellants' intent to pay their 1974 tax liability of \$198.32 by the \$55.42 check and their \$142.90 refund. For an undisclosed reason, however, respondent separated the returns for processing, recorded the 1974 amended return as filed without remittance, and refunded \$198.32 (\$55.42 check plus \$142.90 overpayment) to appellants. The refund warrant was sent to **appellants** on June 14, 1976, and cashed by them on June 24, 1976. At this time the \$198.32, which was the amount of tax liability shown on appellants' 1974 amended return, remained unpaid.

On June 6, 1976, respondent issued a notice of proposed assessment which incorporated the revisions contained in appellants' 1974 amended return, but excluded the **adjustments** previously contained in its earlier notice of April 7. This notice should have reflected a tax liability of \$124.76 (\$198.32 minus \$73.56). However, respondent computed the liability as \$125.56. This mathematical error was later revised to reflect the correct amount of \$124.76. At **this time** two notices of proposed assessment were outstanding; the April 7 notice reflecting a tax liability of \$73.56, and the June 6 notice reflecting a tax liability of \$124.76.

On July 15, 1976, appellants **paid \$73.56**. There, remained unpaid, as of this date, \$124.76 as reflected on respondent's second notice of proposed assessment dated **June 6**.

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Appellants argue that the 1974 assessments have been paid in full. Apparently, it is appellants' position that submission of the \$55.42 check coupled with their 1975 refund of \$142.90, which was intended to pay their 1974 income tax liability in total, served to extinguish their 1974 liability. No doubt this was appellants' intent. However, the fact remains that the entire amount of \$198.32 was refunded to them, leaving their 1974 liability unpaid. (Cf. Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976; Appeal of Frank R. and C. A. Moothart, Cal. St. Bd. of Equal., Feb. 8, 1978.)

Appellants' payment of \$73.56 on July 15, 1976, reduced the unpaid assessment to \$124.76. This amount remains unpaid. Accordingly, we must conclude that respondent's action in this matter be sustained.

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 John D. and E. Jean Browne against a proposed assessment of additional personal income tax in the amount of \$124.76 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of March, 1979, by the State Board of Equalization.

 Chairman
 Member
 Member
_____, Member
_____, Member