

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }  
ROBERT M. AND ROSE SILVER }

For Appellants: Robert M. Silver, in pro. per.

For Respondent: Bruce W. Walker  
Chief Counsel

John A. Stilwell, Jr.  
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 Robert M. and Rose Silver against a proposed assessment of additional personal income tax of \$657.85, including penalty, for the year 1971.

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Appellants filed their 1971 state income tax return in July 1973. They did not itemize their deductions since the amount of their adjusted gross income was such that use of the standard deduction resulted in no tax liability.

In 1975 the Internal Revenue Service reported to respondent several adjustments made to appellants' 1971 federal return. The report indicated that appellants had consented to all the federal adjustments in March 1975. In August 1975 respondent issued its proposed assessment based upon the federal report. However, certain itemized deductions, not described in the record, which the federal authorities allowed were disallowed under California law. A business loss deduction of **\$14,414.00** resulting from a commodities sale was disallowed by both authorities. In addition, respondent assessed a 25 percent penalty for failure to file a timely return.

Appellants questioned the timeliness of the assessment, as well as the adjustments and imposition of **the penalty**. Respondent sent appellants a letter in December 1975, explaining the adjustments and requesting a schedule **of itemized** deductions. When no response was received, the assessments were affirmed and this appeal followed.

The issues to be decided are: (1) whether the proposed assessment is barred by the **statute** of limitations; (2) whether respondent properly applied the federal adjustments; (3) whether the 25 percent late filing penalty was properly imposed.

We have concluded that all three questions may be disposed of easily. First, Revenue and Taxation Code section 18586 provides that "notice of a proposed deficiency **assessment** shall be mailed to the taxpayer within four years after the return was filed." Clearly, the proposed assessment here was well within the statutory limits.

Second, appellants' have **the burden** of establishing error in respondent's determination of a deficiency based upon federal adjustments. (**Rev. & Tax. Code, § 18451.**) Here, appellants not only conceded the adjustments at the federal level but have also failed **to submit** any evidence showing their entitlement to the disallowed business loss deduction. Therefore, the assessment must be accepted. (Appeal of James A. McAfee, Cal. St. Bd. of Equal., Feb. 3, 1977.)

Finally, Revenue and Taxation Code section §18681, subdivision (a), provides a penalty for failing to file a timely return, unless the taxpayer shows "that the failure is due to reasonable cause and not due to willful neglect."

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Appellants have given no explanation for the filing of their 1971 return more than a year after the due date. Therefore the penalty was properly imposed.

For the above reasons, respondent's action in this matter must 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 1'8595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Robert M. and Rose Silver against a proposed assessment of additional personal income tax of \$657.85, including penalty, for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of June , 1979, by the State Board of Equalization.

William B. Bennett, Chairman  
Robert [unclear], Member  
George [unclear], Member  
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\_\_\_\_\_, Member