

Appeal of Lois L. Miller

The question presented is whether respondent's assessment, which was based on a federal audit report, is correct.

Appellant's 1975 federal personal income tax return was audited by the Internal Revenue Service. As a result of the audit, IRS disallowed head of household status and some claimed business expense deductions taken by appellant. Respondent was furnished the IRS audit report under the authority of section 6103 (b) of the Internal Revenue Code.

Subsequently, respondent issued a proposed assessment of additional personal income tax based upon the federal report. Appellant protested the proposed assessment, contending that the federal report had been revised and she had been allowed head of household status. Respondent requested a copy of the revised federal report from appellant and the IRS, but instead received from both parties the original federal report without any changes to the federal adjustments. Respondent affirmed its proposed assessment and this timely appeal followed.

Section 18451 of the Revenue and Taxation Code provides, in part, that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a determination by the Franchise Tax Board based upon a **federal audit report is presumed correct**, and the burden is on the taxpayer to overcome that presumption. (Appeal of Herman D. and Russell Mae Jones, Cal. St. Bd. of Equal April 10, 1979; Appeal of Sam and Jeanne Chelner, Cal. St. Bd. of Equal., July 26, 1978.) Despite numerous opportunities to produce evidence in support of her position, appellant has failed to provide any substantiation of her alleged right to the head of household status during the year under appeal. Under such circumstances, we must sustain respondent's action.

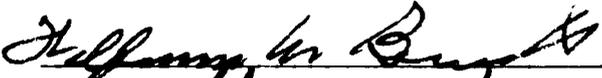
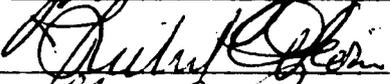
O R D E R

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

Appeal of Lois J. Miller

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 Lois J. Miller against a proposed assessment of additional personal income tax in the amount of \$94.36 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of August, 1979, by the State Board of Equalization.

 _____, Chairman
 _____, Member
 _____, Member
 _____, Member
_____, Member