

Appeal of Robert F. and Clara B. Pyle

The sole question for decision is whether respondent's issuance of a proposed assessment of additional tax for 1973 on the basis of a federal audit report was barred by the fact that a previous deficiency assessment for the same taxable year had issued and been paid by appellants.

Upon review of appellants' 1973 California personal income tax **return**, respondent determined that they had incorrectly computed their tax on preference income. On October 10, 1974, respondent issued a notice of proposed assessment of additional **tax** in the amount of \$597.61, plus interest, **for** the year 1973, based upon its recomputation of the tax due on such income. Appellants paid the proposed assessment without protest.

Thereafter respondent received an Internal Revenue Service report showing audit adjustments made to appellants' federal income tax returns for 1972, 1973, and 1974. On November 5, 1976, respondent issued notices of proposed assessment for taxable years 1972 and 1973 based upon the federal adjustments. Appellants protested only the deficiency assessment for 1973, and respondent's denial of that protest gave rise to this appeal.

Appellants argue that the second deficiency assessment **issued against them by respondent for 1973** was **improper** because respondent had already audited their return for that year and had issued a previous deficiency assessment. Appellants state that they did not agree with that earlier assessment, but they nevertheless paid it because they understood that their account with respondent for 1973 would then be closed. In that regard, they contend they have been advised by counsel that respondent's second assessment "constitutes Res Judicata and thereby exceeds the Statute of Limitation."

It is well settled that the Personal. Income Tax Law expressly authorizes respondent to propose a second deficiency assessment for a particular taxable year, even after a previous assessment issued for the same year has been paid. (Appeal of James T. and Janice Sennett, Cal. St. Bd. of Equal., Sept. 28, 1977; Appeal of J. H. Hoepfel, Cal. St. Bd. of Equal., Feb. 26, 1962; Appeal of Louis Hozz and Ettie Hozz, Cal. st. Bd. of Equal., March 30, 1944; see also Rev. & Tax. Code, §§ 18583 and 18584.) Accepting payment for one assessment does not extinguish respondent's power to issue subsequent timely assessments for the same

