

Appeal of Olen H. and E. Smith

<u>Year</u>	<u>Proposed Assessment</u>	<u>Penalty</u>
1972 (Olen H. Smith)	\$618.03	\$309.01
1974 (Olen H. Smith)	728.80	182.20
1975 (Olen H.-and E. Smith)	432.06	216.03

'Information was received by respondent Franchise Tax Board, indicating that wages in the amount of **\$14,589.32** were paid to appellant Olen H. Smith during 1972. Respondent then searched its files and was unable to locate a return from appellant for that year. **On December 4, 1975**, respondent issued a notice of proposed assessment for the year 1972 including penalties for failure to file a return and failure to file a return upon notice and demand.

For similar reasons subsequent notices of proposed assessment were issued to appellant Olen H. Smith for 1974, and to appellants Olen H. and E. Smith for 1975. The proposed assessment for 1974 included a penalty for failure to file a return. The one for 1975 included penalties for failure to file a return and failure to file a return upon notice and demand.

All three proposed assessments were protested, the claim being made that a personal income tax return was **filed and the tax liability paid for each of** the years in question. Additionally, it was claimed that no notice and demand to file a return was received either for the year 1972 or the year 1975.. However, no substantiation of any of these assertions was presented by the appellants. Respondent therefore denied each of the protests, and appellants appealed.

With respect to the proposed assessment for 1972, we note that a modification is in order. Respondent has learned from an Internal Revenue Service Wage and Tax Statement that appellant was married in 1972 and that his employer **withheld** \$78.62 in California personal income taxes. Additionally, further review **of** appellant's case has revealed that he did not receive a notice and demand for that year. Taking these factors into account, respondent concedes that the tax liability for 1972 should be \$206.19 (corrected additional assessment of \$164.95 and 25 percent delinquency penalty of \$41.24). The proposed assessments for 1974 and 1975 remain as originally propounded.

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The remaining issues, therefore, are whether appellants filed, for each of the years in question, a personal income tax return and paid the entire amount of tax due; and whether they received a notice and demand to file a return for the year 1975.

In regard to the year 1972, appellant Olen H. Smith has submitted only a copy of a payroll check stub for the week ended May 28, 1972, which shows that \$1.43 was withheld from his wages for that period for payment of California income taxes. While this appears to establish that some tax was withheld from appellant's wages during 1972, **respondent has** already recognized this in agreeing to the reduction of the proposed assessment for that year to take into account the entire amount of taxes withheld from appellant's 1972 wages. The submitted document does not establish that appellant's tax liability for 1972 was not greater than the amount of tax withheld, nor does it tend to establish that appellant filed a 1972 tax return.

With respect to the years 1974 and 1975, appellants have submitted no evidence in support of their **contentions**.

It is well settled that findings of the Franchise Tax Board in assessing taxes and penalties are presumptively correct and that a taxpayer disputing an assessment has the burden of proving it incorrect. (Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977; Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977.) Mere uncorroborated assertions **by** appellant cannot sustain this burden of proof. (Appeal of Sarkis N. Shmavonian, Cal. St. Bd. of Equal., April 6, 1977; Appeal of Wing Edwin and Faye Lew, Cal. St. Bd. of Equal., Sept. 17, 1973.)

Since appellants have not submitted evidence for any of the years in question rebutting the proposed assessments, such proposed assessments must be sustained, to the extent modified above for 1972, and in full for 1974 and 1975.

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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 Olen H. and E. Smith against proposed assessments of additional personal income tax and penalties as follows:

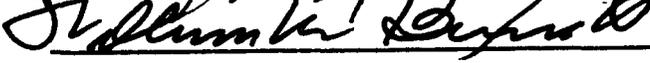
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be and the same is hereby modified to reflect the conceded reduction of the proposed assessment and penalty for 1972. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 8th day of January , 1980, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member