80-SBE-081

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
MARCO J. AND MARGARET A.)
SORTILLON)

Appearances:

For Appellants: Marco J. Sortillon, in pro. per.

For Respondent: James T. Philbin
Supervising Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Marco J. and Margaret A. Sortillon against a proposed assessment of additional personal income tax in the amount of $746.48 for the year 1975, and on the protest of

Marco J. Sortillon against proposed assessments of additional personal income tax and penalties in the total amounts of $2,533.59 and $3,485.34 for the years 1976 and 1977, respectively.

Appellants filed a joint California personal income tax return for 1975 showing an adjusted gross income of $6,885.95, no tax liability, and a refund due of all their withholding in the amount of $704.36. In calculating their adjusted gross income, appellants discounted their gross income to reflect their opinion of the "fair market value" of Federal Reserve notes. Upon reviewing the return, respondent rejected appellants' attempt to account for Federal Reserve notes at less than their face value, and issued the deficiency assessment- in question for 1975.

For the year 1976, appellants filed a joint personal income tax return Form 540 devoid of information regarding their income or deductions. In place of this information, appellants indicated that they objected to providing it because to do so would invade both their right to privacy and their right not to incriminate themselves. When respondent asked them to file a return showing their income and deductions, appellants declined. Consequently, on the basis of appellant Marco J. Sortillon's W-2 form, respondent assessed tax and penalties against him alone, using the tax rates applicable to a married person filing a separate return. The penalties assessed were for failure to file a return, failure to furnish information upon request, negligence, and underpayment of estimated tax.

For the year 1977, appellant Marco J. Sortillon filed another uninformative return form, but this time he selected the filing status of a married person filing separately. Once again, respondent was compelled to use his W-2 to compute his tax, and it levied the same four penalties asserted for the previous year.

It is settled law that respondent's determinations of additional tax, including the penalties involved in this case, are presumptively correct, and that the taxpayer bears the burden of proving-that they are wrong. (See, 'e.g., Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) No such proof has been presented. In fact, the record reveals clearly that respondent's computations of appellants' income are correct, and that the

penalties are appropriate. It should be noted, however, that respondent has agreed to reduce the failure to file and estimated tax penalties for 1976 and 1977 because of withholding by Mr. Sortillon's employer in each year.

In attempting to justify the manner in which they filed their "returns" for the years in question, appellants have made voluminous arguments. We have examined all of them, and we find each one completely lacking in merit. Federal Reserve notes must be reported as income at their face value, regardless of how their purchasing power may fluctuate from time to time. (Appeal of-Robert S. Means, Cal. St. Bd. of Equal., Jan. 9, 1979.) Similarly, a Form 540 that does not contain any information regarding the taxpayer's income and deductions does not constitute a valid return. (Appeal of Arthur W. Keech, Cal. St. Rd. of Equal., July 26, 1977.) Thus, although appellants purported to file a joint return for 1976, the form they filed was not a "return, " and respondent therefore was entitled to assess the tax against Mr. Sortillon as though he were a married person filing a separate return. (Appeal of Christina Gee Davis, Cal. St. Rd. of Equal. , April 8, 1980.)

For the reasons expressed above, respondent's action in 'this matter will be sustained, 'with the exception of the agreed reductions in the failure to file and estimated tax penalties.

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,

Appeals of Marco J. and Margaret A. Sortillon

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 Marco J. and Margaret A. Sortillon against a proposed assessment of additional personal income tax in the amount of $746.48 for the year 1975, and on the protest of Marco J. Sortillon against proposed assessments of additional personal income tax and penalties in the total amounts of $2,533.59 and $3,485.34 for the years 1976 and 1977, respectively, be and the same is hereby modified in accordance with respondent's concession regarding the failure to file and estimated tax penalties for 1976 and 1977. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 30th day of June, 1980, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member