

Appeal of James M. Miley

The sole issue presented by this appeal is whether appellant has established error in respondent's proposed assessment of **additional** personal income tax.

Appellant, a divorced man, files his personal income tax returns on a calendar year basis. The Internal Revenue Service audited appellant's returns for 1979 and disallowed certain deductions from gross income. Respondent issued a notice of proposed assessment based on that federal audit report. Appellant **protested** respondent's action, declaring that the tax laws are unfair to divorced people and that respondent's action is barred by the statute of limitations. After due consideration of appellant's protest, respondent affirmed the assessment, and this appeal followed.

It is well settled that a deficiency assessment based on a federal audit is presumed correct. (Appeal of George C. Broderick, Cal. St. Bd. of Equal., Sept. 21, 1982; Appeal of Arthur G. and Rogelia V. McCaw, Cal. St. Bd. of Equal., March 3, 1982; Appeal of Albion W. and Virginia B. Spear, Cal. St. Bd. of Equal., April 20, 1964.) The taxpayer must either concede that the federal audit report is correct or bear the burden of proving that it is incorrect. (Rev. & Tax. Code, § 18451.) Appellant criticizes the tax laws as unfair. These allegations, however, do not provide any authority for a finding that the federal audit report is incorrect. We must hold, therefore, that appellant has failed to satisfy the required burden of proof. In view of appellant's grievance, his statements are better addressed to the legislative branch of government, for it has the power to determine what the law will be. (City Council v. Superior Court, 179 Cal.App.2d 389 [3 Cal.Rptr. 796] (1960).)

Revenue and Taxation Code section 18'586 provides that "notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed." The subject notice of proposed assessment of additional tax **for** the year 1979 was mailed on September 2, 1981, clearly within the statutory limits. Therefore, appellant's statute-of-limitations argument is without merit.

For the above reasons, respondent's action in this matter **must** be sustained.

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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 there'for,

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 James M. Miley against a proposed assessment of additional personal income tax in the amount of \$211.00 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett , Chairman
Conway H. Collis , Member
Ernest J. Dronenburg, Jr. , Member
Richard Nevins , Member
Walter Harvey* , Member

*For Kenneth Cory, per Government Code Section 7.9