83-SBE-234

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
EUGENE F. AND MARILYN C. BRADFORD)

Appearances:

For Appellants: Eugene F. Bradford, in pro. per.

For Respondent: Elleene A. Kirkland Counsel

OPINION

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Eugene F. and Marilyn C. Bradford against proposed assessments of additional personal income tax and penalties in the total amounts of $1,217.50 and $792.75 for the years 1978 and 1979, respectively.

Appellants filed a delinquent personal income tax return for 1978 and a timely return for 1979. The returns reported no wage or salary income, but did declare income from a trust and from rents. Each return showed no tax 'liability.

For each year, a return was also filed for the "Eugene F. -Bradford Family Trust." These returns reflected distributions of income to Marilyn Bradford and to the Bradfords' three children. After deductions for these distributions, depreciation for an unidentified building and furnishings, and other deductions for auto expenses, medical expenses for the trustee, housing and pool maintenance costs, utilities, and telephone expenses, the trust's tax liability for each year was seven dollars. No schedules identifying the source of the trust's income here included. Marilyn Bradford signed the 1978 return as trustee, and both appellants signed the 1979 return as trustees.

In 1981, respondent commenced an audit of the 1978 and 1979 returns filed by appellants and by the trust. Although respondent requested information regarding the trust, including a copy of the trust instrument, appellants failed to provide it. Consequently, respondent issued notices of proposed assessment for both years advising appellants that the trust would not be recognized for tax purposes and that all of the income reported by the trust would be attributed to appellants. Respondent also imposed a delinquent filing penalty for 1978 and negligence penalties for both 1978 and 1979.

It is well settled that respondent's determinations of additional tax and penalties are presumptively correct, and that the taxpayer bears the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) Appellants clearly have not met their burden in this case. For example, despite repeated requests that they supply a copy of the trust documents, appellants have neither complied nor offered a reasonable. explanation for their failure to comply.. As a result, there is absolutely no evidence in the record upon which to base a finding that a trust even existed, much less that it was valid for tax purposes. Under these circumstances, we could not possibly conclude that respondent's assessments were erroneous in any respect. Accordingly, respondent's action in this matter will be sustained.

ORDER

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 Eugene F. and Marilyn C. Bradford against proposed assessments of additional personal income tax and penalties in the total amounts of $1,217.50 and $792.75 for the years 1978 and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of October, 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