

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE; OF CALIFORNIA

In the Matter of the Appeal of)
MICHAEL E. AND CHARLA J. POLLAK)

Appearances:

For Appellants: Michael E. Pollak,
in pro. per.

For Respondent: Carl G. Rnopke
Counsel

O P I N I O N

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 Michael E. and Charla J. Pollak against a proposed assessment of additional personal income tax and penalty in the total amount of \$105.21 for the year 1978.

Appeal of Michael E. and Charla J. Pollak

The question in this matter is whether appellants have shown respondent's proposed assessment to be erroneous.

Appellants' 1978 federal personal income tax return was audited by the Internal Revenue Service. After receiving a copy of the federal audit, respondent made similar adjustments to appellants' 1978 California personal income tax return. Respondent also disallowed a \$167 deduction for employee contributions to the State Disability Insurance Fund (SDI). In addition, respondent assessed a negligence penalty based on a similar federal penalty. The above action was incorporated into a notice of proposed assessment which appellant protested. After due consideration, however, **such notice was affirmed** and this appeal followed.

Appellants' principal argument is that all or part of respondent's action is unconstitutional. However, they do not question the correctness of the federal adjustments upon which respondent's action is based. Pursuant to section 18451 of the Revenue and Taxation Code, appellants are obliged to concede the accuracy of such federal adjustments or state wherein they are erroneous. Since appellants have not even addressed the correctness of the federal changes, they have not shown them to be in error. Accordingly, respondent's assessment based on the federal adjustments **must be** deemed correct. (Appeal of Bernard J. and Elia C. Smith, Cal. St. Bd. of Equal., Jan. 9, 1979.)

The disallowance of the **SDI** deduction is also correct as respondent's regulation, effective since **1975**, specifically states that employee contributions to the **SDI** fund are nondeductible personal expenses. (Cal. Admin. Code, tit. **18**, reg. 17204(f); see also Appeal of Arnold E. and Mildred H. Galef, Cal. St. Bd. of Equal., April 10, 1979.)

As stated above, appellants have not specifically addressed any of the components of respondent's action but have instead voiced certain constitutional objections. We are precluded by section 3.5 of article III of the California Constitution from determining that the statutes involved herein are unconstitutional or unenforceable, and it has been our consistent policy to decline to decide constitutional issues in appeals involving **deficiency** assessments. In light of those factors, we rely on the discussion above in finding respondent's action in this matter entirely proper.

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 Michael E. and Charla J. Pollak against a proposed assessment of additional personal income tax and penalty in the total amount of \$105.21 for the year 1978, 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