



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
BARBARA JEAN MATLOCK)

Appearances:

For Appellant: E. R. Williams
Attorney at Law

For Respondent: Paul J. Petrozzi
Counsel

O P I N I O N

This appeal is made pursuant to section 18646 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the petition of Barbara Jean Matlock for redetermination of a jeopardy assessment of personal income tax in the amount of \$1,183.00 for the period January 1 through October 27, 1976.

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On October 27, 1976, appellant was arrested and found to be in possession of 83.7 grams of heroin, narcotics paraphernalia and \$886.00 in cash. She was charged with and convicted of possessing heroin for sale and possessing controlled substance paraphernalia.

Upon receiving the above information, respondent issued a jeopardy assessment: of \$1,410.00 based on estimated income of \$21,000. Pursuant to Revenue and Taxation Code section 18817, respondent collected the cash seized and credited \$886.00 to appellant's account. Appellant petitioned for reassessment and on the basis of information received during the petition proceedings, respondent revised the assessment downward to \$1,183.00.

In reconstructing appellant's income, respondent did not use the familiar method of drug sales projection but used the cash expenditures method, basing its computation on several facts in the record. Appellant's probation report and her own admissions indicated clearly that appellant had used heroin for many years. Her maximum use was \$70 to \$80 worth of heroin a day, although appellant has not stated the precise amount she used during the jeopardy period. Using an average of half the maximum amount as an estimate, respondent determined that appellant would have needed \$12,000.00 to support her own habit during the jeopardy period. The heroin appellant possessed on October 27 was valued at an average price of \$1,100.00 an ounce (for a total of \$3,400.00) based on Bureau of Narcotic Enforcement statistics. Finally, appellant stated that her monthly living expenses during the jeopardy period were \$265.00, for a total of \$2,650.00. The above figures, taken together with the \$886.00 seized, formed the basis of respondent's revised estimate that appellant's income for the period in question was at least \$18,000.00.

Appellant was arrested a second time in February 1977, at which time \$524.00 in cash was seized. This sum, along with the \$886.00 previously seized, was applied to the jeopardy assessment and \$227.00 was refunded to appellant. This timely appeal followed.

The issue presented is whether respondent's reconstruction of appellant's income was reasonable.

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Respondent's authority to reconstruct a taxpayer's income is found in Revenue and Taxation Code section 17561, subdivision (b), and its corresponding regulation:

If the taxpayer does not regularly employ a method of accounting which clearly reflects his income, the computation of taxable income shall be made in a manner which, in the opinion of the Franchise Tax Board, does clearly reflect income. (Cal. Admin. Code, tit. 18, reg. 17561, subd. (b)(1).)

A reasonable reconstruction is presumed correct, but the presumption is rebutted if the reconstruction is shown to be arbitrary and excessive or based on assumptions which are not supported by the evidence. (Shades Ridge Holding Co., Inc., ¶ 64,275 P-H Memo. T. C. (1964), affd. sub nom. Fiorella v. Commissioner, 361 F. 2d 326 (5th Cir. 1966); Appeal of David Leon Rose, Cal. St. Bd. of Equal., March 8, 1976.) In other words, there must be credible evidence in the record which, if accepted as true, would induce a reasonable belief that the amount of tax assessed against the taxpayer is due and owing. (Appeal of James Godfrey Gallardo, Cal. St. Bd. of Equal., Sept. 28, 1977; Appeal of Burr McFarland Lyons, Cal. St. Bd. of Equal., Dec. 15, 1976.)

Appellant's argument on appeal is that she was not charged with selling narcotics and respondent has not presented any evidence of drug sales. This contention is irrelevant, however, because respondent did not use the sales projection method to estimate appellant's income but instead used the cash expenditures method, a variant of the net worth method.

The choice of a particular method is discretionary but certain proof requirements apply to use of the cash expenditures method. Principal among these is the determination "with reasonable certainty" of appellant's cash on hand at the beginning of the taxable year as a starting point from which to calculate the extent to which expenditures exceed income. (See Holland v. United States, 348 U.S. 121 [99 L. Ed. 150] (1954); see also, Appeal of Ronald Lee Royer, Cal. St. Bd. of Equal., July 26, 1978.) Respondent's determination of appellant's opening net worth for the jeopardy period was based on the fact that appellant lost her job early in 1975, yet continued to incur normal living expenses as well as

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the expense of supporting her heroin addiction. None of these facts is disputed by appellant, nor has appellant presented evidence of other sources of income. Under the circumstances,, although respondent's estimate of appellant's income may be imprecise, it is based on unchallenged facts, not conjecture, and must be accepted. (See Appeal of Burr McFarland Lyons, supra.)

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

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 petition of Barbara Jean **Matlock** for redetermination of a jeopardy assessment: of personal income tax in the amount of \$1,183.00 for the period January 1 through October 27, 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of
November 1979, by the State Board of Equalization.

William W. Brown Chairman
Paul J. Hedrick , Member
Frank J. Swinburg , Member
John J. ... I = , Member
Geoff ... , Member