

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
)
)
HORACE H. AND MILDRED E. HUBBARD)

Appearances:

For Appellants: Horace H. Hubbard, in propria persona
For Respondent: Burl D. Lack, Chief Counsel

O P I N I O N

This appeal is made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Horace H. and Mildred E. Hubbard to proposed assessments of additional personal income tax and penalties in the aggregate amounts of \$45.84, \$43.01, \$20.48, \$134.79 and ~~\$97.84~~ for the years 1946 to 1950, inclusive.

Horace H. and Mildred E. Hubbard, husband and wife, live in Burbank, California. During the years under review, Horace operated the Hubbard Cigar **Store** as a sole proprietorship, selling cigars, candy, magazines and newspapers. He also engaged in certain gambling activities, the exact nature of which is not known.

Because Appellants' expenses far exceeded the income they reported for federal income tax **purposes**, an internal revenue agent reconstructed their income by the net worth method. Appellants petitioned the Tax Court for a redetermination of the income so computed and the matter was eventually closed by stipulation. The terms of this agreement are not known.

Appellants have never filed State income tax returns although they were sent five separate requests or demands to do so during 1953 and 1954 by Respondent. On July 9, 1954, both Appellants signed the return receipt of a registered letter containing such a demand. Appellants have also been requested to furnish Respondent with a copy of the Tax Court stipulation, but have not done so.

Since Appellants failed to furnish any information **concern-**ing their income, the Franchise Tax Board determined that they received adjusted gross income in the amounts of \$7,091.91,

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\$6,949.64, \$5,824.20, \$9,669.43 and \$8,691.77 in the years 1946 through 1950. This determination was based upon the federal revenue agent's report. The Franchise Tax Board proposed assessments based on these amounts and added penalties of 25% for failure to file returns, 25% for failure to file returns after notice and demand, and 50% for fraud, pursuant to Sections 18681, 18682 and 18685 of the Revenue and Taxation Code. Respondent, however, withdrew the fraud penalties after this appeal was filed.

Appellant asserts that he never made money from his gambling activities, that, in fact, he earned only a modest income of about \$300 per month and therefore, was never required to file a return or pay a tax under the California Income Tax Law. He alleges that the federal audit was wholly based on estimates and is incorrect. Appellant has presented no evidence to support his statements, however.

Section 18682 states in part: "If any taxpayer, upon notice and demand by the Franchise Tax Board, fails or refuses to make and file a return required by this part, the Franchise Tax Board ... may estimate the net income and compute and levy the amounts of the tax due from any available information."

The Franchise Tax Board's determination of a deficiency, based upon a federal audit report, is presumed to be correct and it is necessary for the taxpayer to show that it is erroneous. (Appeal of Nicholas H. Obritsch, Cal. St. Bd. of Equal., February 17, 1959, 2 CCH Cal. Tax Cas. Par. 201-252, 3 P-H State & Local Tax Serv. Cal. Par. 58154.) In the absence of any evidence which would corroborate Appellants' self-serving declarations we conclude that the deficiency assessments must be upheld. Since Appellants have never filed returns and the evidence shows that demand was made, it necessarily follows that the penalties for failure to file returns and failure to file returns upon demand were properly applied.

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 protests of Horace H. and

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Mildred E. Hubbard to proposed assessments of additional personal income tax and penalties in the aggregate amounts of \$45.84, ~~\$43.01, \$20.48, \$134.79~~ and ~~\$97.84~~ for the years 1946 to 1950, inclusive, is modified in that the fraud penalties are deleted; in all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 13th day of December, 1961, by the State Board of Equalization.

John W. Lynch, Chairman

Geo. R. Reilly, Member

Paul R. Leake, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary