

Appeals of Douglas H. Acrea

The proposed assessment for 1973 is based on federal audit determinations sustained by the U.S. Tax Court. Appellant has not pointed to any specific errors in the federal findings, but merely asserts that respondent did not hold a hearing before assessing **the deficiency** and that he is entitled to have a jury trial.

The assessment for 1975 is based on wage information supplied by appellant's employer, since appellant failed to file a return for that year, even after respondent requested him to do so. Using the available information, respondent calculated appellant's tax liability and added **25 percent** penalties for failure to file and failure to file after notice and demand. The accuracy of respondent's determination of appellant's income was later confirmed by appellant's 1975 W-2 form.

It is well established that respondent's determinations, including those based on federal audit findings, are presumptively correct, and that the taxpayer has the burden **of proving** them wrong. (See, e.g., Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April **6, 1977**; Appeal of C. G. Feil, Cal. St. Bd. of Equal., May **10, 1977**; Appeal of Wing E. and Faye D. Lew, Cal. St. Bd. of Equal., Aug. **15, 1978**.) This principle also applies to the penalties assessed in this case. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March **4, 1980**.)

Appellant has offered no evidence to show that there were any errors in respondent's assessments. Instead, he has contented himself with the assertion of various frivolous constitutional objections to filing a return and paying state income taxes. There is absolutely no merit in those objections, or in his contentions that he is entitled to a jury trial and that respondent **should** have held a hearing before proposing the 1973 assessment. No error having been established in the assessments, respondent's action in this matter will be sustained.

