



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
RONALD IPPOLITO )

Appearances:

For Appellant; A. J. 3orth

For Respondent:, Jean Harrison Ograd  
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 Ronald.Ippolito against a proposed assessment of additional personal income tax and penalties in the total amount of \$1,972.72 for the year 1977.

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The sole issue for determination is whether appellant has shown that respondent's proposed assessment is erroneous.

Respondent received information from the State Department of Employment Development showing that during 1977 appellant had received wages in the amount of **\$20,752.00**. Respondent searched its files and discovered that appellant had failed to file a California personal income tax return for that year. Respondent issued appellant a **notice and demand** to file a return, but appellant did not comply. Therefore, respondent computed appellant's taxable income on the basis of the aforementioned information, and issued a deficiency assessment for the appropriate tax due. The assessment included penalties **levied pursuant** to sections 18681(a), 18683 and 18684 of the Revenue and Taxation Code.

It is well settled that respondent's determinations of tax and penalties for failure to file a return are presumptively correct, and that **the taxpayer** bears the burden of proving them erroneous. (Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., **April 6, 1977**; Appeal of Sarkis N. Shmavonian, Cal. St. Bd. of Equal., **April 6, 1977**; Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., **Feb. 3, 1977**; Appeal of Myron E. and Alice Z. Gire, Sept. 10, 1969.)

Appellant's sole argument in 'this appeal is that subjecting him to California personal income tax liability for the year in question violates his constitutional rights. As we have stated in prior instances, it is our well established policy to abstain from deciding constitutional questions in appeals involving deficiency assessments.. (Appeal of William A. Hanks, Cal. St. Bd. of Equal., **April 6, 1977**; Appeal of Iris E. Clark, Cal. St. Bd. of Equal., **March 8, 1976**.)<sup>1/</sup> Accordingly, we must sustain respondent's action with respect to the proposed assessment.

<sup>1/</sup> We do note, however, that the power of the State Legislature to levy personal income taxes is inherent and requires no special constitutional grant. (Tetreault v. Franchise Tax Board, 255 Cal.App.2d 277, 280 [63 Cal.Rptr. 326] (1967); Hetzel v. Franchise Tax Board, 161 Cal.App.2d 224, 228 [326 P.2d 611] (1958).)

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In regard to the penalty determinations, appellant has not submitted any significant evidence or arguments in refutation thereof. Accordingly, appellant has failed to carry his burden of proving the penalties erroneous and they must be upheld. (Appeal of Myron E. and Alice Z. Gire, supra. )

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 Ronald Ippolito against a proposed assessment of additional personal income tax and penalties in the total amount of **\$1,972.72** for the year 1977 be and the same is hereby sustained.

Done at Sacramento, California, this **18th** day of November, 1980, by the State Board of Equalization, with Members Nevins, Reilly, Dronenburg and Bennett present.

Richard Nevins , Chairman  
George R. Reilly , Member  
Ernest J. Dronenburg, Jr. , Member  
William M. Bennett , Member  
 , Member