

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
RICHARD L. STARNES)

For Appellant: Richard L. Starnes,
 in pro. per.

For Respondent: James T. **Philbin**
 Supervising 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 Richard L. Starnes against proposed assessments of additional personal income tax and penalty in the total amounts of **\$1,047.57, \$1,169.96** and **\$1,117.57** for the years 1976, 1977 and 1978, respectively.

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The issue to be decided is whether appellant has shown respondent's determinations to be incorrect.

Appellant filed personal income tax Form 540's during the appeal years which provided no information on his income or allowable deductions. Instead, the words "Object: 5th Amendment" or "Object: Self Incrimination" were filled in on almost every line of the form. Respondent notified appellant that these did not constitute valid returns and demanded that he file proper returns within thirty days. Appellant's only response was a letter charging that respondent was violating his constitutional rights. Respondent determined appellant's income from available sources and issued proposed assessments based on this information. Penalties were also imposed for failure to timely file, failure to file on notice and demand, negligence, and failure to pay estimated tax.

Respondent's determinations are presumptively correct, and appellant bears the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrlich, Cal. St. Bd. of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case; (Appeal of Harold G. Jindrlich, supra (failure to file timely, and failure to file after notice and demand); Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969 (negligence); see Appeal of Kenton A. Dean, Cal. St. Bd. of Equal., July 31, 1973 (estimated tax).) No such proof has been presented here. Appellant's only arguments are directed to the constitutionality of respondent's action. In this regard, we believe the passage of Proposition 5 by the voters on June 6, 1978, adding section 3.5 to Article III of the California Constitution, precludes our determining that the statutory provisions involved are unconstitutional or unenforceable. In any event, we have found similar contentions in numerous other appeals to be totally without merit (see, e.g., Appeal of Richard R. and D. Sibla, Cal. St. Bd. of Equal., Oct. 28, 1980; Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980), and find no reason to decide differently in this case. Respondent's actions are therefore sustained.

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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 Richard L. Starnes against proposed assessments of additional personal income tax and penalty in the total amounts of **\$1,047.57, \$1,169.96** and **\$1,117.57** for the years 1976, 1977 and 1978, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of January, 1981, by the State Board of Equalization, with Members Dronenburg, Bennett, Nevins and Reilly present.

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