



Appeal of Richard L. Starnes

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. Jindrigh, Cal. St. Bd. of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case; (Appeal of Harold G. Jindrigh, 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.

