



BEFORE THE **STATE BOARD** OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
CHARLES EMMERT )

Appearances:

For Appellant: Charles Emmert  
in **pro.** per.  
For Respondent: Daniel A. Borzoni  
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 Charles Emmert against proposed assessments of additional personal income tax and penalties in the total amounts of **\$1,882.46, \$1,998.53, \$1,920.35,** and \$563.20 for the years 1974, 1975, 1977, and 1978, respectively.

Appeal of Charles Emmert

Appellant filed California personal income tax Forms 540 for the years in question which disclosed no information about his income, deductions or credits. In spaces provided for reporting information on each form, appellant filled with the words "Object - Self-incrimination.." Respondent requested that valid returns be filed, but appellant failed to comply. Faced with appellant's failure to discharge his statutorily-required self-assessment responsibilities, respondent issued notices of proposed assessment on basis of the information available. The assessment for each year included penalties for failure to file a timely return, failure to file after notice and demand, negligence, and underpayment of estimated tax. Respondent now concedes that appellant was not a resident of California during the year 1977 and, consequently, there is no tax liability for the year. In addition, respondent has reviewed the information available to it and determined that the proposed assessments for the years 1974 and 1975 should be revised downward to reflect a tax liability and penalties based upon a taxable income of \$6,000.00.

Respondent's determinations of additional-tax and penalties are presumptively correct, and the taxpayer has the burden of proving that they are wrong. ('See Appeal of K. L. Durham, Cal. St. Bd. of Equal.', March 4, 1980.) Here appellant has made no effort to show any error. His contentions that he is not required to file complete returns are clearly without merit, based as they are on a variety of frivolous "constitutional" arguments.. (See Appeal of Harry Sievert, Cal. St. Bd. of Equal., April 8, 1980; appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) Subject to the concessions which have been made, respondent's action in this matter will be sustained.

Appeal of Charles Emmert

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 Charles Emmert against a proposed assessment of additional personal income tax in the amount of **\$1,920.35** for the year 1977, be and the same is reversed in accordance with respondent's concession that appellant was not a resident of California during this year: that the action of the Franchise Tax Board on the protests of Charles Emmert against proposed assessments of additional personal income tax and penalties in the total amounts of **\$1,882.46** and **\$1,998.53** for the years 1974 and 1975, respectively, be and the same is hereby modified in accordance with respondent's determination that the proposed assessments for those years should be revised downward to reflect a tax liability and penalties based upon a taxable income of **\$6,000.00**; and that the action of the Franchise Tax Board on the protest of Charles Emmert against a proposed assessment of additional personal income tax and penalties in the total amount of \$563.20 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 23rd day of June , ~~1981~~, by the State Board of Equalization, with Board **Members** Mr. Dronenburg, Mr. Reilly, Mr. Bennett and Mr. Nevins present.

<u>Ernest J. Dronenburg, Jr.</u>	, Chairman
<u>George R. Reilly</u>	, Member
<u>William M. Bennett</u>	, <b>Member</b>
<u>Richard Nevins</u>	, Member
<u></u>	, Member