

BEFORE THE STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MAX H. AND NEVA F. HELM

For Appellants: Max H. Helm in pro. per.

in pro. per

For Respondent: James T. Philbin Supervising Counsel

<u>OPINIO</u>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 Max H. and Neva F. Helm against a proposed assessment of additional personal income tax and penalties in the total amount of \$1,116.00 for the year 1977.

Appeal of Max H. and Neva F. Helm

After receiving information indicating that the appellants were required to file a California personal income tax return for the year 1977, respondent advised them that it had no record of their having filed a return for that year, and it demanded that they file. When appellants failed to comply, respondent estimated their income to be \$15,650.00 on basis of their 1976 adjusted gross income and issued a proposed assessment. The latter included penalties for failure to file a timely return, failure to file after notice and demand, and negligence. Subsequently, respondent received a Wage and Tax Statement showing that appellant Max H. Helm received wages in the amount of \$14,204.38, during the year 1977 and state income tax in the amount of \$333.86 was withheld. Respondent has expressed its willingness to make the adjustments to reflect the amount of tax withheld.

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, the proposed assessment of tax will have to be adjusted slightly because of the information contained on the Wage and Tax Statement. In general, however, no error has been shown. lants' contentions that they are not subject to the personal income tax and are not required to file valid returns are clearly without merit, based as they are on a variety of frivolous "constitutional" objections to the existing system of income taxation. (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.) On basis of the record before us and subject to certain adjustments specified in our order, respondent's action in this matter will be sustained.

Appeal of Max H. and Neva F. Helm

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 Max H. and Neva F. Helm against a proposed assessment of additional personal income tax and penalties in the total amount of \$1,116.00 for the year 1977, be and the same is hereby modified (1) to reflect a gross income of \$14,204.38; (2) to provide for the allowance of a credit against the proposed assessment of additional tax to reflect the amount of California personal income tax withheld in 1977; and (3) the amount of the penalty imposed under section 18681 of the Revenue and Taxaton Code shall be reduced to reflect such withholding. In all other respects, the action of the Franchise Tax Board is 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.

Ernest_JDronenburg, Jr,	,	Chairman
George R. Reilly	,	Member
William M. Bennett,	,	Member
Richard Nevins	,	Member
	,	Member