

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

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

For Appellant: Richard L. Tyler,
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. Tyler against a proposed assessment of additional personal income tax and penalties in the total amount of **\$5,293.41** for the year 1978.

Appeal of Richard L. Tyler

The question for determination is whether appellant has established any error in respondent's proposed assessment of personal income tax and penalties.

After receiving information **indicating** that appellant was required to file a return for the year 1978, respondent advised him that it had no record of his having filed a return for that year, and it demanded that he file. Appellant did not respond, and respondent then issued a proposed assessment based upon information obtained from the California Employment Development Department, which indicated that appellant had received wages from Flying Tiger Lines, Inc., in the amount of **\$39,996.00** for the year in issue, and had interest income in the amount of \$395.00. Included in the proposed assessment are penalties for negligence, failure to file a return, failure to file after notice and demand, and failure to pay estimated tax. Appellant protested and claimed that he had filed a return. He urged that the Fifth Amendment allows him the right not to furnish information.

Respondent's determinations of additional tax and penalties are presumptively correct, and appellant has the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) No such proof has been presented. Appellant's contentions that he is not required to file returns and therein furnish information are clearly without merit. (See Appeal of Harry Sievert, Cal. St. Bd. of Equal., April 8, 1980; Appeal of Ronald Matheson, Cal. St. Bd. of Equal., **Feb. 6, 1980**; Appeal of Marvin L. and Betty J. Robey, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) On the basis of the evidence before us, we can only conclude that respondent correctly computed appellant's tax liability, and that the imposition of penalties was fully justified. Respondent's action in this matter will, therefore, be sustained.

Appeal of Richard L. Tyler

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. Tyler against a proposed assessment of additional personal income tax and penalties in the total amount of **\$5,293.41** for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of September, 1981, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Reilly and Mr. Nevins present.

Ernest J. Dronenburg, Jr., Chairman

George R. Reilly, Member

Richard Nevins, Member

_____, Member

_____, Member