



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES H. ROSE)

Appearances:

For Appellant: A. J. Porth

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 James H. Rose against proposed assessments of additional personal income tax and penalties in the total amounts of \$577.72, \$710.05 and \$734.69 for the years 1976, 1977 and 1978, respectively.

Appeal of James H. Rose

The question for decision is whether appellant has established error in respondent's proposed assessments of additional tax or in the penalties assessed for the years in question.

Appellant is a barber in Garden Grove, California. On the personal income tax Form 540's which he submitted for 1976, 1977 and 1978, appellant entered "None" or cited **various** amendments to the United States Constitution in the spaces provided for financial data and other information.

Respondent advised appellant that such incomplete forms do not constitute valid returns and demanded that he file proper returns. He refused to do so, saying that he was not required to file. Based upon information from the Department of Consumer Affairs which indicated that appellant had been actively engaged as a barber during the years under appeal and in the absence of any evidence regarding appellant's actual income during 1976, 1977 and 1978, respondent referred to the "Handbook of Labor Statistics," published by the United States Department of Labor. On the basis of statistics contained in that publication, respondent estimated appellant's income as a full-time barber for the years in question, issuing deficiency assessments reflecting those income estimates. Included in the assessments were penalties for failure to file a timely return, failure to file on notice and demand, negligence, and failure to pay estimated tax.

Appellant's basic contention appears to be that in the appeal years he did not have sufficient income to require the filing of returns because he was paid for his services in Federal Reserve notes rather than in lawful, 'constitutional dollars. Appellant cites various provisions of the United States Constitution which he believes support that conclusion. He also makes a number of assertions concerning the alleged unconstitutionality of the federal and state systems of taxation.

The issues and arguments presented by this appeal have been thoroughly discussed in prior cases before this board. We have repeatedly noted their frivolity. (See, e.g., Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Marvin L. and Betty J. Robey, Cal. St., Bd. of Equal., Jan. 9, 1979; Appeal of Myrtle T. Peterson, Cal. St. Bd. of Equal., April 6, 1978; Appeal of Donald H. Lichtle, Cal. St. Bd.

Appeal of James H. Rose

of Equal., Oct. 6, 1976.) To the extent that appellant's arguments differ from those made in earlier cases, we have examined them and found them to be equally without merit. Although appellant complains **that** respondent's assessments are arbitrary, he has refused to come forth with any information regarding his actual income during 1976, 1977 and 1978. In similar situations, the courts have stated that the responsible administrative body has great latitude in making determinations of **liability**, particularly where the taxpayer files no valid returns and **refuses** to cooperate in the ascertainment of his income. (Joseph F. Giddio, 54 T.C. 1530 (1970); George Lee Kindred, ¶ 79,457 P-H Memo. T.C. (1979).) Under those circumstances, appellant has failed to show that respondent's estimates of his income were unreasonable or that there was error in the deficiency assessments based thereon. It also appears that the penalties were fully justified. Accordingly, respondent's action will be sustained in all respects.

