



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WILLIAM RAMSEY)

For Appellant: William Ramsey,
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 William Ramsey against a proposed assessment of additional personal income tax and penalties in the total amount of **\$1,082.68** for the year 1978.

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The sole issue presented by this appeal is whether appellant has established error in respondent's proposed assessment of additional personal income tax or in the penalties assessed for the year in issue.

Appellant filed a California personal income tax Form 540 for 1978 which failed to disclose any information regarding his income, deductions, or credits. The subject notice of proposed assessment was issued after appellant failed to comply with respondent's demand that he file a valid return containing the pertinent information. Included in the proposed assessment, which was based upon information obtained from appellant's employer, are penalties totaling \$402.64 for failure to file a return, failure to file upon notice and demand, negligence, and failure to pay estimated income tax.

Respondent's determinations of tax 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. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case. (Appeal of K. L. Durham, supra; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) No such proof has been presented here. The only arguments advanced by appellant consist of constitutional challenges to provisions of the California Personal Income Tax Law. With respect to appellant's constitutional arguments, we believe that the adoption of Proposition 5 by the voters on June 6, 1978, adding section 3.5 to article III of the California Constitution, 1/ precludes our determining that the

1/ Section 3.5 of article III provides:

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

(Continued on next page.)

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statutory provisions involved are unconstitutional or unenforceable. Furthermore, this board has a well established policy of abstention from deciding constitutional questions in appeals involving deficiency assessments. (Appeal of Ruben B. **Salas**, Cal. St. Bd. of Equal., Sept. 27, 1978; Appeal of Iris E. Clark, Cal. St. Bd. of Equal., March 8, 1976.) This policy is based upon the absence of specific statutory authority which would allow respondent to obtain judicial review of an adverse decision in a case of this type, and our belief that such review should be available for questions of constitutional importance.

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.

1/ (continued)

(b) To declare a statute unconstitutional;

(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

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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 William Ramsey against a proposed assessment of additional personal income tax and penalties in the total amount of **\$1,082.68** for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of November , **1981**, by the State Board of Equalization, with Roard Members **Mr. Dronenburg, Mr. Reilly, Mr. Bennett** and **Mr. Nevins** present.

Ernest J. Dronenburg, Jr. , Chairman
George R. Reilly , Mem'ber
William M. Bennett , Member
Richard Nevins , Member
 , Member