

Appeal of Phillip J. Brodie

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

Appellant did not file California personal income tax returns for 1976 and 1977. When respondent demanded that he do so, appellant answered by stating that he was not required to file returns for those years. In his appeal from respondent's action in this matter, appellant has cited the Fifth Amendment to the United States Constitution in support of his refusal to file personal income tax returns for the years in issue.

On the basis of information obtained from the California Employment Development Department, respondent issued notices of proposed assessment of additional personal income tax in the amounts of \$1,003.55 and \$1,088.47 for 1976 and 1977, respectively. Respondent also imposed penalties totaling \$551.96 and \$668.04 for the years in issue, respectively, for failure to file a return, failure to file upon notice and demand, and for negligence.

Respondent's determinations 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/}

^{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:

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precludes our determining that the 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. Finally, we note that the power of the state Legislature to levy personal income taxes is inherent and requires no special constitutional grant. (Tetreault v. Franchise Tax Board, 255 Cal.App.2d 277, 280 [63 Cal.Rptr. 326] (1967); Hetzel v. Franchise Tax Board, 161 Cal.App.2d 224, 228 [326 P.2d 611] (1958).)

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 from page 2.)

(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:

(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.

