



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
ORICK RATZLAFF }

Appearances:

For Appellants: Bill Drexler

For Respondent: James C. Stewart
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 **Orick** Ratzlaff against a proposed assessment of additional personal income tax and penalties in the total amount of **\$2,322.60** for the year 1977.

Appeal of Orick Ratzlaff

After receiving information indicating that appellant was required to file a California personal income tax return for the year 1977, respondent advised appellant that it had no record of his having filed a return for that year, and it demanded that he file. When appellant failed to comply, respondent issued a proposed assessment for 1977 based on information obtained from appellant's employer, Ernest W. Hahn; Inc., and from Allstate Savings and Loan. The assessment includes penalties for failure to file a timely return, failure to file upon notice and demand, negligence'; and underpayment of estimated tax due.

Respondent's determination of additional tax and penalties is presumptively **correct**, and the taxpayer has the burden of proving that it is wrong. (See Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) Here-appellant has argued that California's personal income tax cannot be applied to him because it is an unapportioned direct tax in violation of the restriction placed on the Congress of the United States by Article I, Section 9, Clause 4 of the Constitution of the United States. California's personal income tax, **however, is** a state tax enacted by California's legislature and so is not prohibited by that portion of the Constitution of the United States cited by appellant.

Appellant has offered no evidence relating to the proper computation of the tax liability or the imposition of the penalties. On the basis of the evidence before us, therefore, 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 be sustained.

Appeal of Orick Ratzlaff

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 Orick Ratzlaff against a proposed assessment of additional personal income tax and penalties in the total amount of \$2,322.60 for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 19th day of P l a v , 1981, by the State Board of Equalization, with all Board members present.

Ernest J. Dronenburg, Jr. --, Chairman

George R. Reilly _____, Member

William M. Bennett _ _ _ _ , Member

Richard Nevins _____, Member

Kenneth Cory _____, Member

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ORICK RATZLAFF)

ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition filed June 8, 1981, by **Orick** Ratzlaff for rehearing of his appeal from the action of the Franchise Tax Board. We are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is hereby ordered that the petition be and the same is hereby denied and that our order of May 19, 1981, be and the same is hereby affirmed.

Done at Sacramento, California, this 5th of January , 1981, by the State Board of Equalization with Board Members **Mr. Reilly**, **Mr. Dronenburg**, and **Mr. Nevins** present.

_____ Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins Member

_____ Member

