

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
BERTRAM M. AND PATTI K. SABO)

Appearances:

For Appellant: A. J. Porth

For Respondent: John R. Akin and
 Jon Jensen
 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 **Bertram M.** and Patti K. Sabo against a proposed assessment of additional personal income tax in the amount of **\$5,463.41** for the year 1974, and against a proposed assessment of personal income tax and penalties in the total amount of **\$11,587.65** for the year 1975.

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The sole issue for determination is whether appellants have established any error in respondent's determination of personal income tax and penalties for the years in issue.

Bertram M. Sabo, hereinafter referred to as appellant, is a dentist engaged in private practice. For 1974 he and his wife filed a joint return reflecting taxable income in excess of \$33,000 and a tax liability of \$1,890. Thereafter, appellants filed an amended return for 1974 reflecting no income and no tax liability. Respondent attempted to audit the returns, particularly certain unusually large deductions claimed on the original 1974 return. When appellant refused to cooperate, respondent issued the notice of proposed assessment disallowing the deductions claimed for 1974.

Respondent also determined that appellants failed to file a return for 1975 and demanded that they do so. When appellants failed to comply, respondent estimated their 1975 income on the basis of the income reported on their original 1974 return and issued a proposed assessment. Included in the assessment were penalties for **failure to file a return** (Rev. & Tax. Code, § 18681) and for failure to file a return after notice and demand (Rev. & Tax. Code, § 18683).

Appellants protested the proposed assessments for both years. When their protest was denied, this appeal followed.

It is well settled that respondent's determinations of additional tax, including the penalties involved in this appeal, are presumptively correct, and the burden of proving them erroneous is upon the taxpayer. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Furthermore, where the taxpayer files no return or otherwise refuses to cooperate in the ascertainment of his income, respondent has great latitude in determining the amount of tax liability, and may use reasonable estimates to establish the taxpayer's income. (See, e.g., Joseph F. Giddio, 54 T.C. 1530 (1970); Norman Thomas, ¶ 80,359 P-H Memo. T.C. (1980); Floyd Douglas, ¶ 80,066 P-H Memo. T.C. (1980); George Lee Kindred, ¶ 79,457 P-H Memo. T.C. (1979).)

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In support of their position, appellants have recited the now familiar list of statutory and constitutional objections to respondent's action. Without exception, these contentions have been rejected as frivolous in previous decisions of the federal judiciary and this board. (See, e.g., United States v. Whitesel, 543 **F.2d** 1176 (6th Cir. 1976); United States v. Daly, 481 **F.2d** 28 (8th Cir.), cert. den., 414 U.S. 1064 [**38 L.Ed.2d 469**] (1973); United States v. Porth, 426 **F.2d** 519 (10th Cir. 1970); Appeal of Arthur J. Porth, supra; Appeal of Armen B. Condo, Cal. St. Bd. of Equal., July 26, 1977.) We see no reason to depart from these decisions in this appeal.

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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 **Bertram M.** and Patti K. Sabo against a proposed assessment of additional personal income tax in the amount of **\$5,463.41** for the year 1974, and against a proposed assessment of personal income tax and penalties in the total amount of **\$11,587.65** for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of January , 1982, 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