

Appeal of Brandon L. Ratzlaff

Appellant failed to file California personal income tax returns for 1976 and **1978**, and did not comply with respondent's written requests to file. Consequently, using information obtained from appellant's employer, respondent estimated appellant's **income** for both years and issued the proposed assessments in issue. Both assessments included penalties for delinquent filing and failure to file after notice and demand, and the 1978 assessment included **additional penalties** for **negligence** and failure to pay estimated tax.

It is well settled that respondent's determinations of additional tax, including the penalties involved in this case, are presumptively correct, and that the taxpayer bears the burden of proving them erroneous. (See, e.g., 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.) No error has been shown. Appellant's only arguments are directed to the constitutionality of respondent's actions, and we are prohibited from declaring that the statutory provisions involved here are unconstitutional or unenforceable. (Cal. Const., art. III, § 3.5.) Respondent's actions in these matters will therefore be sustained.

