



BEE'ORE THE STATE BOARD OF EQUALIZATION
OF **THE** STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
)
FRED H. AND WILMA SUGGS)

Appearances:

For Appellants: Wilma Suggs, in pro. per.

For Respondent: John R. Akin
 Counsel

OPINION

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 Fred H. and Wilma Suggs ayainst proposed assessments of additional personal income tax and penalties in the total amounts of **\$1,299.20, \$1,364.25** and \$11522.99 for the years 1975, 1976 and 1977, respectively.

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Respondent notified appellants that it had no record that they had filed returns for the three years at issue and demanded that they file. When appellants then failed to file, respondent estimated appellants' income for the years 1975, 1976 and 1977 based upon information about their income during 1974 and information that appellants continued to be similarly employed during those years. Respondent issued notices of proposed assessment of tax and penalties, and this appeal followed.

The determination of a deficiency by a taxing authority is presumed to be correct, and the burden is upon the taxpayer to prove that the amount of income to be taxed is an amount less than that on which the deficiency assessment was based. (Kenney v Commissioner, 111 F.2d 374 (5th Cir. 1940); Appeal of John and Codelle Perez, Cal. St. Bd. of Equal., Feb. 16, 1971.)

Appellants maintain (1) that they owe no California personal income taxes because wages, salaries, fees or commissions are property immune from an unapportioned direct tax, and (2) that compensation received by an individual in exchange for personal labor or services cannot constitute "income" subject to tax.

Appellants' first contention apparently refers to the restriction contained in the Constitution of the United States, article I, section 9, which restricts congressional taxing power by requiring that no **capitation**, or other direct tax shall be laid, unless in proportion to the census or enumeration. That restriction was later relaxed by the 16th Amendment, which permitted the Congress to tax income without regard to any census or enumeration. Appellants' first contention overlooks the distinction between the powers of the federal government and those of state governments. The latter have reserved powers while the federal government only has those which are granted to it by the U.S. Constitution. Thus, any unapportioned tax imposed by Congress cannot exceed the grant of power to Congress contained in the 16th Amendment. In contrast, the power of the state Legislature to levy taxes is inherent and requires no special constitutional grant. (Hetzel v. Franchise Tax Board, 61 Cal.App.2d 224 [326 P.2d 611] (1958).) The California Constitution, article XIII, section 26(a), which provides that taxes on or measured by income may be imposed on persons, corporations or other entities as prescribed by law, expressly recognizes California's power to levy income taxes.

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Appellants' second contention **must** also fail. The principle that wages constitute gross income for tax purposes is too well established to require further discussion. (Appeal of Francis J. Pearson, Cal. St. Bd. of Equal., May **19, 1981**; Katherine F. Miller, 39 T.C. **505 (1962).**)

Since appellants have not demonstrated that the proposed assessments are invalid, we must sustain respondent's action.

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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 Fred H. and Wilma Suggs against proposed assessments of additional personal income tax and penalties in the total amounts of **\$1,299.20**, **\$1,364.25** and **\$1,522.99** for the years 1975, 1976 and 1977, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of February , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

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