



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LOWELL A. HAHN)

Appearances:

For Appellant: A. J. Porth

For Respondent: Jon Jensen and
John R. Akin
Tax Counsels

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 Lowell A. Hahn against proposed assessments of additional personal income tax and penalties in the total amounts of **\$5,388.48, \$6,334.07, \$4,418.60 and \$7,479.88** for the years 1975, 1976, 1977 and 1978, respectively.

Appeal of Lowell A. Hahn

The issue in this matter is whether appellant has established any error in respondent's proposed assessments.

For 1975 and 1976 appellant filed forms 540 in which the lines for reporting income, deductions or credits contained only asterisks and the word "NONE." For 1977 and 1978 he filed no returns. Respondent **notified** appellant that his 1975 and 1976 forms 540 were not valid returns, and demanded that he file returns for those years as well as for 1977 and 1978. Appellant failed to comply. Respondent then issued notices of proposed assessment based upon estimated income. Respondent estimated appellant's income from 1974 gross receipts reported from his legal practice on his 1974 return, with a 15 percent growth factor allowed for each succeeding year. Various penalties were also imposed. Although appellant protested, he still declined to file any of the returns at issue. Consequently, respondent affirmed the proposed assessments and appellant appealed. Through an oversight, the penalties for 1977 were not affirmed.

It is settled law that respondent's determinations of tax and penalties are **presumptively** correct, and that the taxpayer bears the burden of proving them erroneous. (Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., **Sept. 10, 1969**; **see also** Appeal of Sarkis N. Shmavonian, Cal. St. Bd. of Equal., April 6, 1977.) Despite numerous opportunities and requests to produce any available evidence to prove that respondent's determinations were erroneous in any respect, appellant has failed to submit any factual information at all. Appellant, therefore, has left us with no alternative but to conclude that respondent's computation of his tax liability was proper and correct in every respect, and that the penalties were fully justified.

Although appellant has also raised a multitude of alleged violations of his constitutional rights by respondent, we must decline to rule on his contentions in view of our well-established policy, in cases involving deficiency assessments, to leave such matters to the courts. (Appeal of Iris E. Clark, Cal. St. Bd. of **Equal.**, March 8, **1976**; Appeal of David and Delores Y. Gibson, Cal. St. Bd. of Equal., April 22, 1975.) Moreover, this board, as an administrative agency, is prohibited from declaring statutes unconstitutional. (Cal. Const., art. III, § 3.5.) Even in the absence of such **restrictions**, however, we would be compelled to conclude that appellant's constitutional arguments are totally without merit.

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ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition filed December 6, 1981, by Lowell A. Hahn 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 November 16, 1981, be and the same is hereby affirmed.

Done at Sacramento, California, this 31st day of March 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