

Appeal of Daniel- F. Meier

Appellant filed a return for 1976 which reported income of "**Less** than \$5.00" in 'Lawful Constitutional Dollars" but reported also that \$538.46 in California income taxes has been withheld from unidentified amounts received by him, For 1977, appellant similarly reported income of "**Less** than \$5.00" and California income tax withholdings of \$410.41.

Respondent notified appellant that those returns did not constitute valid returns and demanded that appellant file proper returns. When appellant did not file the demanded returns, respondent reconstructed **appellant's income** using information from the Regents of the University of California that appellant had received \$13,524 in wages or compensation from them in 1976 and \$17,096 in 1977, and information from the state **Employment Development Department** that in 1977 appellant had received \$8,320 in wages from the Lawrence Berkeley Laboratory and \$120.00 in interest income from the Imperial Savings and Loan Association. On the basis of that reconstruction, on March 30, 1979, respondent issued a notice of additional tax **proposed**. to be assessed for 1976 in the amount of \$520 plus penalties for failure to file a return (Rev. & Tax. Code, **§ 18681**), failure to file a return after notice and demand (Rev. & Tax. Code, **§ 18683**), and for a deficiency due to negligence (Rev. & Tax. Code, **§ 18684**). Respondent also issued a notice of additional tax proposed to be assessed for **1977** in the amount of **\$2,829.82** plus penalties for failure to file, failure to file after notice and demand, for a deficiency due to negligence, plus a **penalty** for failure to pay estimated tax (Rev. & Tax. Code, **§ 18685.8**).

Appellant protested. After a hearing, followed by time afforded appellant to demonstrate any incorrectness of the proposed **assessment**, respondent affirmed its assessments on December **14**, 1979. 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.**)

During respondent's administrative proceedings following the issuance of its proposed tax **assessments**,

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appellant apparently argued that income taxes could not be imposed as a result of the receipt of Federal Reserve notes, and that any requirement that a person file California income tax returns was constitutionally impermissible. We have consistently rejected those arguments in the past. (Appeal of Donald H. Lichtle, Cal. St. Bd. of Equal., Oct. 6, 1976; Appeal of Myrtle T. Peterson, Cal. St. Bd. of Equal., April 6, 1978; Appeal of Leon C. Harwood, Cal. St. Bd. of Equal., Dec. 5, 1978.) Since they have absolutely no merit, we again reject those arguments here.

Appellant's brief on this appeal argues that respondent's failure to timely provide appellant with information to which he was entitled left appellant with insufficient time to prepare to refute respondent's assessments. Copies of correspondence supplied by appellant indicate, however, that he asked respondent about the nature and method of transmission of the income information upon which respondent's proposed assessments were based, and respondent apparently supplied that information to appellant in exchanges of correspondence during the first quarter of 1980. Appellant has had from then until now to gather evidence to support his position on appeal. But appellant has not offered any evidence that the amount of income to be taxed was a specific amount which was less than the amount upon which the deficiency assessment was based.

In its brief, respondent noted that its notices of proposed assessment did not credit the amounts of the withholdings which appellant reported had been made for 1976 and 1977. Respondent proposes that those amounts be credited against the amounts of tax, if any, which we find to be due for those years. Respondent is prepared to then make any appropriate adjustments to the applicable penalties.

For the above reasons, respondent's action, as modified by the credits and adjustments respondent proposes, must be sustained.

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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 Daniel F. Meier against proposed assessments of additional personal income tax and penalties in the total amounts of **\$806.00** and **\$2,829.82** for the years 1976 and 1977, respectively, be and the same is hereby modified to allow proper crediting for the tax which was withheld. In all other respects, the action of the Franchise Tax Board is sustained.

Done at **Sacramento**, California, this **3rd** day of March , **1982**, by the State Board of Equalization, with Board **Members** Mr. Bennett, Mr. Reilly, Mr. Dronenburg, Mr.. Nevins and Mr. Cory present.

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