

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
ROBERT R. ABOLTIN, JR., et al.)

Appearances:

For Appellants: Norm Youngs
 Your Heritage Protection Assn.

For Respondent: Michael E. Brownell
 Mark McEvidly
 Counsel

O P I N I O N

These **appeals** are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of the following appellants against proposed **assessments** of additional personal income tax and penalties in the amounts and for the years set forth below.

Appeals of Robert R. Aboltin, Jr., et al.

<u>Appellant</u>	Year	Proposed Assessments	
		Tax	Penalties
Robert R. Aboltin, Jr.	1979	\$1,904.00	\$ 894.15
Carmen Aguirre	1979	773.00	336.50
Joan C. Alberts	1979	698.00	349.00
Roselia Ambriz	1979	397.00	198.50
Faye D. Anderson	1979	793.00	436.15
William D. Armstrong	1979	958.00	526.90
Evelyn K. Arnold	1979	322.00	132.08
Furl L. Ascuc	1979	1,013.00	538.46
Nettie Ascue	1979	1,057.00	622.66
William A. Barclay	1979	1,134.00	623.70
Kay A. Barr	1978	1,319.00	588.28
Mary A. Barr	1979	1,244.00	634.20
Theodore L. Barr	1979	743.00	408.65
Robert H. Bartle	1979	3,070.00	1,638.50
Richard E. Bartlett	1979	1,508.00	754.00
I. Barton	1979	1,420.00	781.00
Floyd Bennett	1979	2,553.00	1,276.50
Vincent T. Bentley	1979	1,266.00	636.30
Gary E. Berrios	1978	759.00	359.50
Peter T. Bertin	1978	1,160.50	712.26
	1979	2,762.00	1,519.00
Harry J. Beyer	1979	1,310.00	720.50
John A. Bogstad	1978	1,359.87	834.60
	1979	1,387.00	831.26
Edward L. Booms	1979	743.00	438.65
Sylvester J. Bowers	1979	2,267.00	1,367.85
Lesley C. Boyle	1979	1,354.00	744.70
Charles H. Brundle	1979	1,486.00	817.30
Robert C. Burleigh	1979	689.00	378.95
Frank P. Calderon	1979	1,134.00	623.70
Wilmer Carter	1979	1,178.00	722.99
Jane L. Casper	1979	716.00	439.44
Barbara J. Castor	1978	219.00	134.41
	1979	390.00	231.95
Beverly Clarke	1978	865.00	432.50
Bonnie G. Clay	1979	316.00	153.00
Frank Clemons	1979	689.00	344.50
Patricia D. Clute	1979	936.00	468.00
Russell L. Cochran	1978	1,303.00	503.48
	1979	1,574.00	865.70
Richard A. Coffman	1978	543.00	271.50
	1979	1,046.00	523.00
Same L. Conrad	1979	958.00	479.00
Howard D. Cook	1979	2,520.00	1,250.00
Herman L. Cooper	1979	1,871.00	1,029.05
Douglas Corhat	1977	265.00	152.11
	1978	310.00	155.08
	1979	493.00	259.20

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<u>Appellant</u>	<u>Year</u>	<u>Proposed Assessments</u>	
		<u>Tax</u>	<u>Penalties</u>
Raymond V. Corn	1979	2,839.00	1,561.45
Allan L. Correi 3	1978	486.00	243.00
Francis Costantino 3	1979	2,223.00	1,222.65
Matthew J. Craig, Sr .	1979	1,178.00	647.90
Fred L. Cutbirth	1978	321.00	176.55
	1979	2,168.00	1,330.59
Russell E.. Dalrymple	1979	1,134.00	567.00
Michael M. Davies	1979	2,201.00	1,210.55
Daniel. L. Debry	1978	1,629.00	814.50
	1979	1,200.00	660.00
Anthony De Gennaro	1979	1,145.00	702.73
Wayne D. DeVogler	1978	740.00	407.00
Charles E. Dormady	1979	493.00	301.51
John H. Dunn	1979	716.00	439.44
James E. Eddens	1979	1,376.00	844.51
Charles M. Eigel	1979	143.00	87.76
	1979	240.00	170.89
Charles A. Elwyn	1979	1,552.00	776.00
Richard F. B. Escamilla	1979	1,464.00	819.03
Barbara J. Evans	1978	140.00	70.00
	1979	958.00	538.45
Thomas L. Fandel	1979	525.00	262.50
	1979	378.00	298.46
Greg A. Fassett	1979	980.00	552.94
James L. Frazier	1979	4,041.00	2,020.50
Charles W. Fretz	1979	833.00	511.25
Claud D. Garcia	1979	446.00	195.32
Virgil C. Garriott	1979	671.00	387.69
Jerry J. Gienger	1979	1,002.00	614.97
Stephen Gillis	1979	418.00	209.00
Roger W. Goldsworthy	1978	937.00	468.50
	1979	1,816.00	908.00
Robert E. Graham	1979	2,542.00	1,398.10
Michael L. Gregg	1979	925.00	462.50
Tony Grubaugh	1979	1,123.00	626.10
John L. Gutierrez	1979	2,234.00	1,117.00
Russell S. Hall	1979	1,376.00	688.00
Woodrow R. Hall, Jr.	1979	1,772.00	1,032.80
Richard R. Hamilton	1979	644.00	322.00
Clois E. Hamner, Sr.	1979	1,497.00	893.07
Brooke B. Hancock	1979	707.00	353.50
Thomas W. Hansen	1979	1,673.00	836.50
Robert B. Marrington	1979	1,134.00	567.00
Eugene L. Harris	1979	1,827.00	913.50
David L. Hedrick	1979	903.00	546.76
Alvin Henderson	1978	701.00	350.50
	1979	914.00	502.70
Steven W. Henderson	1979	1,508.00	754.00

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<u>Appellant</u>	<u>Year</u>	<u>Proposed Assessments</u>	
		<u>Tax</u>	<u>Penalties</u>
Robert Hendricks	1979	1,497.00	899.33
William A. Hendrix	1979	893.00	"48.07
Raymond D. Henry	1979	843.00	421.50
Leonard A. Hentschel	1979	418.00	229.90
Robert L. Hernandez	1979	1,904.00	952.00
Albert Himden	1979	2,410.00	1,428.44
Wendell L. Holcomb	1979	1,046.00	5323.00
Robert R. Holtz	1979	310.00	170.50
Daniel Hoyos	1979	1,079.00	631.77
Billy J. Hughes	1979	2,245.10	1,240.62
Ron Hughes	1979	304.00	152.00
Robert S. Humphrey	1979	2,311.00	1,331.08
Dean F. Isenbcrger	1979	2,465.00	1,232.50
Frederic L. Jackson	1979	1,915.00	1,175.31
Maurice S. Jackson	1979	1,728.00	864.00
Michael K. Johnson	1979	1,112.00	6 4 3 . 0 7
David.A. Kause	1979	439.00	252.68
Elizabeth C. Kause	1979	783.00	391.50
Ronnie D. Keener	1979	1,475.00	840.77
Joseph Keigley	1979	2,454.00	1,227.00
Roger D. Kellison	1979	1,244.00	622.00
Lewis D. Kelly	1 9 7 9	404.00	222.20
Nancy S. Kelly	1979	1,255.00	6 9 0 . 2 5
Robert S. Koffroth	1979	1,530.00	852.22
David W. Kolkhurst	1979	1,750.00	875.00
James Komons	1979	1,959.00	1,128.52
Ernest E. Koons	1979	2,014.00	1,158.37
John J. Kover	1979	1,398.00	828.42
Charles C. Kutz	1979	991.00	550.31
Alfred G. Laforgia	1979	2,641.00	1,452.55
Edward M. Lansky	1979	8,336.36	4,584.80
William A. Lindner	1979.	1,706.00	980.05
Donald E. Macmillan	1979	1,486.00	743.00
George A. Manzo	1979	969.00	484.50
Robert Martinez	1978	691.00	345.00
jack W. McFadden	1979	517.00	322.21
Jeffery M. McKnight	1978	464.00	232.00
Richard McNary	1979	1,750.00	979.75
Edward W. Mead	1979	2,267.00	1,265.41
Mark Mange	1979	262.00	131.00
Daniel B. Merrifield	1978	1,502.00	751.00
L. F. Merritt	1979	853.00	469.15
Dirk Milligan	1979	1,002.00	614.97
Virginia Minadeo	1979	925.00	549.62
Patrick R. Minderler	1979	418.00	232.35
Erwin Mitschek	1979	376.00	227.56
Isabel B. Mitschek	1979	298.00	149.00
Leroy Moore, Jr.	1979	590.00	324.50

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<u>Appellant</u>	<u>Year</u>	<u>Proposed Assessments</u>	
		<u>Tax</u>	<u>Penalties</u>
Jerry R. Morgan	1978	1,224.00	612.00
Reza G. Mottaghi	1979	1,761.00	968.55
Kurt J. Niesner	1979	783.00	391.50
Edward R. Norment	1979	509.00	254.50
Michael L. O'Brien	1979	644.00	322.00
George Okrucky, Jr.	1979	1,387.00	851.26
C. Laura Ornelaz	1979	573.00	286.50
Dean D. Paajancn	1979	1,068.00	534.00
Joseph R. Patton	1979	1,178.00	647.90
Donald D. Patridge	1979	2,531.00	1,553.38
Bill W. Pebley	1979	883.00	347.77
Beverly Ann Phares	1979	1,145.00	629.75
David E. Porter	1979	843.00	463.65
Joan M. Potter	1979	292.00	160.60
John Proefrock	1977	1,229.44	629.52
	1979	1,497.00	823.35
Jaime Quinones	1979	743.00	371.50
Jacquelyn Rabideaux	1979	2,091.00	1,045.50
James N. Ratlidge	1979	376.00	188.00
Cristina C. Ray	1979	793.00	396.00
Michael Renek	1979	1,508.00	829.40
Richard W. Rescott	1979	411.00	205.50
Helen G. Reynolds	1979	238.00	199.00
Camille L. Robert	1979	671.00	335.50
Jimmy L. Roberts	1979	1,508.00	704.25
William Rodriguez	1978	959.00	479.50
	1979	1,233.00	608.22
Frank Rose	1978	1,174.05	575.53
	1979	1,464.00	898.52
Josh D. Rubell	1979	390.00	214.50
Daniel R. Salazar	1979	2,168.00	1,084.00
Edward J. Sarvis	1979	3,301.00	1,815.55
Eldridge L. Sayles	1979	581.00	356.58
Cheryl L. Sherr	1979	557.00	341.85
George W. Short	1978	588.00	294.00
	1979	1,640.00	820.00
Gerald L. Siltamaki	1979	936.00	574.46
Donald T. Silva	1979	863.00	529.65
Diana Silveira	1979	763.00	468.28
Jack G. Silveira	1979	1,486.00	912.02
Jay W. Simms	1979	2,454.00	1,506.12
Lynn R. Singleton	1979	2,300.00	1,411.60
M. Ellis Smith	1979	2,157.00	1,078.50
Gary J. Sneddon	1979	653.00	326.50
Jessye Sons	1979	157.00	96.35
Wilbourne L. Spradling	1979	533.00	268.49
Richard Terrien	1979	1,761.00	880.50

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<u>Appellant</u>	<u>Year</u>	<u>Proposed Assessments</u>	
		<u>Tax</u>	<u>Penalties</u>
Autley C. Thomas	1979	3,456.40	2,121.33
David L. Thomas	1978	1,261.00	630.50
Dorothy L. Thomas	1979	1,376.00	755.80
Daniel Torres, Sr	1979	1,849.00	1,134.81
Fernando Torres	1979	2,091.00	1,299.90
Ronald J. Trejo	1979	1,563.00	959.28
Carol L. Trujillo	1979	863.00	529.65
Ronald P. Trujillo	1979	1,706.00	11047.04
Richard T. Urban	1979	1,343.00	824.25
Mike Y. Valencia	1979	873.00	535.80
Susan J. Vaughn	1979	883.00	441.50
Donald E. Walton	1979	1,266.00	633.00
John M. Ward	1979	573.00	286.50
Jesse F. Webb	1979	1,497.00	748.50
Charles Webber	1979	783.00	391.50
Gerald Weisbaum	1979	1,134.00	770.24
Robert A. Welsh	1979	2,014.00	1,007.00
Leslie A. White	1979	525.00	262.50
Leon D. Wirts	1979	743.00	371.50
Evelyn G. Wolfrom	1979	813.00	498.97
Harlan D. Woods, Sr.	1979	1,728.00	864.00
Paul Woodson	1979	626.00	313.00
Steven A. Yancey	1979	2,047.00	1,256.33
Paul E. Zarn	1979	1,145.00	572.50

Except for Patricia D. Clute, the subject appellants did not file California personal income tax returns, and take the position that they are not taxpayers and do not owe any tax. She filed a return which disclosed no information relative to her income, deductions or credits, and simply made a blanket, invalid assertion of the Fifth Amendment privilege against self-incrimination. When requested, she refused to file a return containing the necessary information. The other appellants also refused to file returns and respondent issued notices of proposed assessment based upon information received from the California Employment Development Department. The proposed assessments also included various penalties, including those for failure to file a return and for failure to file after notice and demand.

It is well settled that respondent's determinations of additional tax, including the penalties involved in these appeals, are presumptively correct, and the burden is upon the taxpayers to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 (201 P.2d 414) (1949); Appeal of Donald W. Cook, Cal. St. Bd. of Equal., May 21, 1980;

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Appeal of Arthur J. Forth, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Myron E. and Alice Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Herethe appellants clearly have not carried theirburden. Appellants' representative strongly contends that every appeal is unique and requires an individual explanation. Under the circumstances, we do not understand his failure in each instance to furnish specific contentions, to detail the relevant facts, or to provide any authority for their position. Needless to say, a taxpayer cannot expect to prevail under such circumstances. In addition, it appears that all of the issues raised herein have been reviewed in detail in our opinion on March 31, 1982, in the Appeals of Fred R. Dauberger, et al., and we conclude that the Dauberger decision is determinative of these appeals. In that decision, we found no merit in the contentions made by the taxpayers.

In the Dauberger opinion we noted that the federal authorities have called for more decisive treatment of tax protester cases and we observed that some of those cases had resulted in the imposition of a penalty for delay pursuant to section 6673 of the Internal Revenue Code. (See, e.g., Roger D. Wilkinson, 71 T.C. 633 (1979); Gordon B. Leitch, Jr., ¶ 81,504 P-H Memo. T.C. (1981); James S. Babcock, ¶ 81,090 P-H Memo. T.C. (1981); Eugene J. May, ¶ 81,119 P-H Memo. T.C. (1981); Ephraim J. Swann, ¶ 81,236 P-H Memo. T.C. (1981); Princess E.-L. Linqham, ¶ 81,042 P-H Memo. T.C. (1981).) We then pointed out that section 19414 of the California Revenue and Taxation Code was patterned after section 6673 and specifically provides:

Whenever it appears to the State Board of Equalization or any court of record of this state that proceedings before it under this part have been instituted by the taxpayer merely for delay, a penalty in an amount not in excess of five hundred dollars (\$500) shall be imposed. Any penalty so imposed shall be paid upon notice and demand from the Franchise Tax Board and shall be collected as a tax.

We then went on to warn that we would not condone repeated appeals where the arguments have been considered and rejected previously, and we advised all individuals who proceed with frivolous cases that serious consideration would be given to the imposition of the penalty under section 19414. Therefore, it is with great concern that we note that several appellants in the present matter, i.e., William A. Barclay, Peter T. Bertin, Barbara J. Castor, Anthony De Gennaro, Robert E. Graham, Leroy Moore, Jr.,

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Michael Renek, and Daniel R. Salazar, have made and had identical arguments rejected in previous decisions by this board as being totally frivolous and without merit. To pursue an appeal under such circumstances can only be construed as an attempt to obstruct and delay the appellate review process. This cannot be tolerated because it disrupts the orderly review of serious appeals by this board and forces the state to incur unnecessary expenses. Consequently, we find that the aforementioned eight appellants have instituted and pursued their proceedings merely for the purpose of delay and a penalty in the amount of five hundred dollars (\$500) shall be imposed against each of them.

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ORDER

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 protests of the previously listed appellants against proposed assessments of additional personal income tax and penalties in the amounts and for the years set forth in the opinion, be and the same is hereby sustained, and that the \$500 delay penalty under section 19414 be imposed against each of the eight appellants named in the opinion and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, this 29th day of June, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member

_____, Member