

Appeal-of James P. Miles

Respondent received information from the Employment Development Department that in 1978 appellant had been paid \$38,450 by Lockheed Missiles & Space Company and \$712 by Lockheed Missiles EFCU. Respondent wrote appellant that it had no record of his having filed a personal income tax return and demanded that he file. When appellant did not respond, respondent issued a notice of proposed assessment of tax based upon the Employment Development Department information. The assessment also included penalties for failure to file a return (Rev. & Tax. Code, § 18681) and failure to file a return after notice and demand (Rev. & Tax. Code, § 18683).

Appellant protested, contending that he could not file a Form 540 without waiving his constitutional rights. After consideration, respondent affirmed its proposed assessment. This appeal followed.

Since appellant's protest, respondent received a copy of a wage and tax statement from Lockheed Missiles & Space Company reporting that during 1978 it paid appellant \$19,778.40 but withheld no state income taxes. Respondent concedes that based on that information the assessment was excessive and should be reduced to \$1,123.00 in tax and \$689.23 in penalties.

Appellant's main arguments are: (1) that California's income tax is prohibited by various provisions of article 1 of the U.S. Constitution; (2) that he is unable to properly pay any tax liability because the Federal Reserve notes he possesses are not lawful money; and (3) that collection of California's income tax through civil procedures deprives him of the protections which the U.S. Constitution affords criminal defendants.

We have encountered similar arguments before in the appeals and cases of individuals sometimes known as "tax protestors." (Cf. Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982, and the citations set forth therein.) We have invariably found the arguments advanced in those appeals to be without merit. For the same reasons expressed in those opinions, we must reject appellant's arguments and sustain the action of the respondent.

