

Appeal of Helmut F. Froeber

The sole issue presented by this appeal is whether appellant has established error in respondent's proposed assessments of additional personal income tax or in the penalties assessed for the years in issue.

On his California personal income tax return forms 540 for the years 1976 and 1977, appellant failed to disclose the required information regarding his income and deductions. On his 1976 form 540, appellant stated that his signature was given involuntarily and "under threat of statutory punishment." In the space provided for the required information on his form 540 for the subsequent year, appellant entered the statement: "Object: Self-incrimination." Respondent issued appellant notices of proposed assessment for both years based upon the Forms W-2 attached to his forms 540. The **subject** proposed assessment for 1976 includes a penalty for failure to file a return; penalties for failure to pay tax by due date, failure to pay **estimated income tax**, and negligence are included in the proposed assessment for **1977**.

It is well settled that respondent's determinations of tax and penalties, other than the fraud penalty, are presumptively correct, and the burden rests upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) No such proof has been presented here.

In support of his position, appellant has advanced a host of familiar contentions, including, inter alia, that the Fifth Amendment to the United States Constitution excuses an individual from reporting his income and filing a return, that his constitutional rights have been abridged because he has been denied a jury trial, and that wages do not constitute income. Each of the "**arguments**" raised by appellant were rejected as **being without merit in the Appeals of Fred R. Dauberger, et al.**, decided by **this board on March 31, 1982**. We see no reason to depart from that decision in this appeal. Respondent's action in this matter will, therefore, 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 Helmut F. Froeber against proposed assessments of additional personal income tax and penalties in the total amounts of **\$1,673.12** and **\$2,908.51** for the years 1976 and 1977, respectively, be and the same is hereby sustained.

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