

Appeal of Dan Willbanks

The sole issue for determination is whether appellant has established any error in respondent's proposed assessments of personal income tax and penalties for 1978.

Appellant did not file a California personal income tax return for the appeal year although required to do so. When respondent demanded that a return be filed, appellant failed to comply. Thereafter, respondent issued the notice of proposed assessment in issue. The assessment was based upon information obtained from the California Employment Development Department. The proposed assessment included penalties for failure to file a return (Rev. & Tax. Code, § 18681), and for failure to file upon notice and demand (Rev. & Tax. Code, § 18683). Appellant protested, but refused to file a return. In due course the proposed assessment was affirmed, and this appeal followed.

It is well settled that respondent's determinations of additional tax, including the penalties involved in this appeal, are presumptively correct, and the burden is upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Arthur J. Porth, Cal. St. Rd. of Equal., Jan. 9, 1979.) In support of his position appellant simply contends that there is no law which requires him to file an income tax return and that he had no income during 1970. Appellant also contends that this board has no jurisdiction. These contentions have been considered and rejected in the Appeals of Fred R. Dauberger, et al., decided March 31, 1982. We see no reason to deviate from that determination in this appeal. Accordingly, respondent's action in this matter will 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 Dan Willbanks against a proposed assessment of additional personal income tax and penalties in the total amount of **\$1,288.50** for the year 1978, 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