

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JAMES R. HARRIS)

Appearances:

For Appellant: Bill Marconda

For Respondent: Michael E. **Brownell**
 John A. Stilwell, Jr.
 Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of James R. **Harris** against a proposed assessment of additional personal income tax and penalties in the total amount of \$11,167.69 for the year 1975.

Appeal of James R. Harris

The sole issue for determination is whether appellant has established any error in respondent's proposed assessments of personal income tax and penalties for 1975.

Appellant, a radiologist, made estimated tax payments in excess of \$6,000 during 1975. However, he did not file a California personal income tax return for that year. Based upon appellant's estimated tax payments, respondent demanded that appellant file a return. When appellant failed to comply, respondent issued the proposed assessment of tax and penalties for failure to file a return (Rev. & Tax. Code, § 18681), and for failure to file upon notice and demand (Rev. & Tax. Code, § 18683). The assessment was based on the basis of information contained in appellant's 1974 state income tax return. 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 that the burden of proving them erroneous is upon the taxpayer. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979.) Furthermore, where the taxpayer files no return or otherwise refuses to cooperate in the ascertainment of his income, respondent has great latitude in determining the amount of-tax liability, and may use reasonable estimates to establish the taxpayer's income. (See, e.g., Joseph F. Giddio, 54 T.C. 1530 (1970); Norman Thomas, ¶ 80,359 P-H Memo. T.C. (1980); Floyd Douglas, ¶ 80,066 P-H Memo. T.C. (1980); George Lee Kindred, ¶ 79,457 P-H Memo. T.C. (1979).)

In support of his position, appellant has relied on the same arguments which we have considered and rejected in the Appeals of Fred R. Dauberger, et al., decided March 31, 1982. We see no reason to deviate from that decision in this appeal. Accordingly, respondent's action in this matter will be sustained.

Appeal of James R. Harris

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 James R. Harris against a proposed assessment of additional personal income tax and penalties in the total amount of **\$11,167.69** for the year 1975, 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.

William M. Bennett , Chairman
Ernest J. Dronenburg, Jr. , Member
-Richard-Nevins , Member
_____ , Member
_____ , Member