

Appeal of Phyllis S. Johnson

The 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.

Appellant did not file California personal income tax returns for the years in issue. When she failed to comply with respondent's demand that she file returns, the subject proposed assessments were issued. Respondent based its estimation of appellant's income for the appeal years by applying a 15 percent growth and inflation factor for each of the years in issue to the rental income reported on her 1975 return; a ten percent growth and inflation factor was applied to appellant's interest and dividend income. The subject proposed assessments include penalties for failure to file a return, failure to file upon notice and demand, failure to pay estimated income tax, and negligence.

It is settled law 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 [201P.2d414] (1949); Appeal of Myron E. and Alice Z. Gire, Cal. St. Rd. of Equal., Sept. 10, 1969.) After reviewing the record on appeal, we can only conclude that no such proof has been presented here.

In support of her position that she is neither constitutionally nor statutorily subject to the California personal income tax, appellant has merely advanced a number of the same arguments which we rejected 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.

On the basis of the evidence before us, we can only conclude that respondent correctly computed appellant's tax liability for the years in issue, and that the imposition of penalties was fully justified. 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 Phyllis S. Johnson against proposed assessments of additional personal income tax and penalties in the total amounts of \$2,445.60, \$3,010.98, \$3,516.98, and \$3,890.88, for the years 1976, 1977, 1978, and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of August, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

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