

Appeal of James R. Matheson-

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

Appellant filed a personal income tax form 540 for 1976 which contained no information concerning his income or deductions. On his appeal protesting the issuance of the resulting proposed assessment, we upheld respondent's determination that appellant had received \$40,438 in income in 1976. (Appeal of James R. Matheson, Cal. St. Bd. of Equal., May 21, 1980.) During the year in issue, appellant held a 50 percent partnership interest in the partnership of Matheson & Matheson. After the appeal of the aforementioned proposed assessment had been filed, respondent determined, on the basis of information disclosed in the partnership's 1976 return, that appellant had additional unreported partnership income during the appeal year. The subject proposed assessment, which includes a delinquency penalty, was subsequently issued. After consideration of appellant's protest, the proposed assessment was affirmed, thereby resulting in this appeal.

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 [201 P.2d 414] (1949); Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. 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 his position, appellant has advanced a number of the same arguments which we rejected in the Appeals of Fred R. Dauberget al., decided by this board on March 31, 1982. We see no reason to depart from that decision in this appeal. Appellant also argues that he is entitled to deduct his distributive share of charitable contributions allegedly made by the partnership in 1976. Appellant has failed to offer any evidence in support of his position that he is entitled to the claimed deduction. Moreover, he has failed to file a valid 1976 personal income tax return on which to claim such a deduction.

On the basis of the evidence before us, we can only conclude that respondent correctly computed appellant's tax liability, and that imposition of the delinquency penalty 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 James R. Matheson against a proposed assessment of additional personal income tax and penalty in the total amount of **\$1,300.62** for the year 1976, 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. Mevins present.

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