

Appeal of John K. Strode

Respondent received information from the Employment Development Department indicating that appellant was required to file a California personal **income**-tax return for 1979. Having no record of such a return being filed, respondent demanded that appellant file. When appellant did not file a return, a proposed assessment was issued based on the wage and interest income information that respondent had received. Penalties were also imposed for failure to file and failure to file after notice and demand.

In August 1981, after filing this appeal, appellant filed a Form **540X**, which reported only **\$45.00** in interest income and \$488.57 in tax withheld. A W-2 form from appellant's employer, the **State** of California, was attached. Respondent determined that the Form **540X** did not constitute a valid return, **but** has agreed to take into consideration the amount shown as withheld.

Appellant contends that wages are not income and that he is not required to file a return. He also argues that respondent's determination violates the state and federal constitutions.

We have recently considered the same wage and filing requirement contentions in Appeals of Fred R. Dauberger, et al., decided March 31, 1982, and rejected them as **totally without** merit. With respect to the constitutional issues raised, we are precluded from determining them because of both article III, section 3.5 of the California Constitution and **our own policy of abstention from deciding such issues in appeals involving deficiency assessments, (Appeals of Fred R. Dauberger, et al., supra.)**

For the reasons stated above, respondent's action is sustained.

