

Appeals of Rita Alexander, et al.

The sole question presented by these appeals is whether appellants have shown respondent's proposed assessments to be in error.

For the years noted above, appellants either did not file tax returns at all or only submitted forms which did not disclose the required information regarding their income and deductions. When respondent demanded that returns be filed, appellants did not comply. The assessments subsequently issued by respondent were based on income information received from the Employment Development Department or from appellants' employers. Various penalties were included in the proposed assessments including those for failure to file (Rev. & Tax. Code, § 18681), failure to file on notice and demand (Rev. & Tax. Code, § 18683), and negligence (Rev. & Tax. Code, § 18684). Respondent miscomputed the five percent negligence penalty imposed on appellant H. Fandrich for the year 1976 and now concedes that the correct amount is \$228.81 rather than \$456.73. Appellants protested, but refused to file valid returns. The proposed assessments were then affirmed, and these appeals followed.

Respondent's determinations of additional tax, including the penalties involved, are presumptively correct, and the appellants bear the burden of showing that they are erroneous. (McCobigan McColan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); F. Marvin L. and Betty J. Robey, Cal. St. Bd. of Equal., Jan. 9, 1979.) Appellants have made no attempt to submit any evidence showing that the assessments in question are incorrect.

Appellants rely instead on the familiar contentions that they are neither subject to the Personal Income Tax Law nor required to file valid returns because of certain constitutional guarantees. We are precluded, however, from determining that the statutes involved are unconstitutional or unenforceable by section 3.5 of article III of the California Constitution, and it has been our consistent policy to decline to decide constitutional issues in appeals involving deficiency assessments. In any case, we note that the arguments raised by appellants have been ruled on by the courts and found to be meritless. (See Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.)

The actions of respondent, therefore, are 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 actions of the Franchise Tax Board on the protests of the following taxpayers against proposed assessments of personal income tax and penalties in the amounts and for the years set forth below, be modified to reflect respondent's concession as to the correct amount of the negligence penalty imposed on appellant H. Pandrich for the year 1976. In all other respects, the actions of the Franchise Tax Board are hereby sustained.

<u>Appellant</u>	<u>Years</u>	<u>Proposed Assessment Tax</u>	<u>Penalties</u>
Rita Alexander	1979	\$1,244.00	\$ 684.20
Eugene Cheney	1979	1,761.00	968.00
H. Pandrich	1974	1,404.64	813.34
	1975	5,459.65	3,082.51
	1976	4,576.35	3,032.08
	1977	4,880.50	2,995.34
	1978	1,768.01	20.42
	1978	2,620.07	1,608.05
	1979	5,308.37	2,469.59
Michael S. Mulcahy	1473	1,222.00	672.10
Lorine Perotti	4979	803.00	441.65

Done at Sacramento, California, this 21st day of September, 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
Coma & Collis , Member
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