

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
JAMES H. COPELAND )

For Appellant: James H. Copeland,  
in pro. per.

For Respondent: Allen R. Wildermuth  
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 H. **Copeland** against a proposed assessment of additional personal income tax and penalties in the total amount of **\$5,808.54** for the year 1979.

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

On his California personal income tax return form 540 for the year 1979, appellant failed to disclose the required information regarding his income, deductions, ~~or~~ credits. In the space provided for this information, appellant noted his objection to providing the relevant data, based upon his Fifth Amendment privilege **against** self-incrimination. When appellant failed to comply with respondent's demand that he file a valid 1979 return, the subject proposed assessment was issued. Respondent based its estimation of appellant's 1979 income upon the income he reported on his 1977 **return**, plus a 15 percent growth and inflation factor for both 1978 and 1979; \$36,621 received by appellant from a partnership with which he ~~was~~ involved during the **appeal** year was also included in his 1979 income. The proposed assessment includes penalties for failure to file a return, failure to file **upon** notice and demand, failure to pay estimated income **tax**, and negligence. In his **appeal** from respondent's action in this matter, appellant has cited the Fifth Amendment privilege **against self-incrimination**; he also asserts the respondent's estimation of his income is in error.

Respondent's determinations of tax are presumptively correct, and appellant bears the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case, (Appeal of K. L. Durham, supra; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969) where the taxpayer files no return and **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); George Lee Kindred, ¶ 79,457 P-H Memo. T.C. (1979).) In reaching **this** conclusion, the courts have invoked the rule that the failure of a party to introduce evidence which is within his control gives rise to the presumption that, if provided, it would be unfavorable. (See Joseph F. Giddio, supra, and the cases cited therein.) **To hold otherwise** would establish skillful concealment as an invincible barrier to the determination of tax liability., (Joseph F. Giddio, supra.) Since appellant has failed to **provide any** evidence

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establishing that respondent's determinations were excessive or without foundation, we must conclude that he has failed to carry his burden of proof. Finally, we find **without** merit appellant's assertion that his Fifth Amendment privilege against self-incrimination excuses his failure to file a return for the year in issue. The privilege against self-incrimination does not constitute an excuse for a total failure to file a return. (United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 4691 (1973)].) Moreover, a blanket declaration of that privilege does not even constitute a valid assertion thereof. (United States v. Jordan, 508 F.2d 750 (7th Cir.), cert. den., 423 U.S. 842 [46 L.Ed.2d 621, reh. den., 423 U.S. 991 [46 L.Ed.2d 3111 (1975)].)

On the basis of the evidence before us, we can only conclude that respondent correctly computed appellant's tax liability, 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 James H. **Copeland** against a proposed assessment of additional **personal income** tax and penalties in the total amount of **\$5,808.54** for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of October , 1982, by the State Board of Equalization,

William M. Bennett , Chairman  
Conway H. Collis , Member  
Ernest J. Dronenburg, Jr. , Member  
- a Richard Nevins , Member  
\_\_\_\_\_ , Member