



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
WAYNE A. CARUSO )

Appearances:

For Appellant: Wayne A. Caruso,  
in pro. per.

For Respondent: Terry Collins  
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 Wayne A. Caruso against a proposed assessment of additional personal income tax and penalty in the total amount of **\$22,326.21** for the year 1979.

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The sole issue is whether appellant has established error in respondent's **proposed** assessment.

Appellant filed a California personal income tax return form for 1979 which disclosed **no** information about his income, deductions, or credits. Appellant entered the word "object" in the spaces provided for that information on the return form. Respondent notified appellant that the return was not valid and demanded that he file a return containing the necessary information. When appellant then failed to so file in response, respondent issued a notice of proposed assessment of tax **estimated** by using income information reported on appellant's personal income tax returns for 1976 and 1977 plus a growth and inflation factor. Respondent included penalties for failure to file a return, failure to file a return after notice and demand, negligence, and failure to pay the estimated tax.

Appellant contends that the amount of the assessment is excessive and so **constitutes** a penalty for asserting his constitutional right against self-incrimination. He proposes that his tax be estimated by using the average amount of his taxes due for the **preceeding** 1.0 years plus an inflation factor.

It is well settled that respondent's determinations of tax and the penalties involved are presumptively correct, and the burden is on the taxpayer to prove 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.) Furthermore, where the taxpayer files no return or otherwise 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); Floyd Douglas, ¶ 80,066 P-H Memo. T.C. (1980).)

Here, 'appellant has failed **to** carry his burden. Appellant's statement that the amount **of** his income estimated by respondent was excessive and his proposal that the amount of his income be estimated with the use of the different method do not demonstrate error in respondent's proposed assessment. In addition, he **certainly** has not established that the assessment amounts to a penalty for asserting the privelege against self-incrimination.

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Accordingly, we sustain respondent's assessment of tax and penalties.

