

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
GREGORY R. COOPER)

For Appellant: Gregory R. Cooper,
in pro. per.

For Respondent: James T. Philbin
Supervising 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 Gregory R. Cooper against a proposed assessment of personal income tax and penalties in the total amount of \$1,775 for 1979.

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The only issue for determination is whether appellant has established any **error in respondent's determination.**

Appellant filed a Form 540 for 1979 disclosing no information concerning his income, **deduction or credits.** The spaces provided for the required information were filled in with the words "Object-self incrimination,," Respondent notified appellant that the Form 540 was not a valid return and demanded that **appellant** file a proper return. When no return was **forthcoming**, respondent issued a proposed assessment based on income information received from appellant's employer and his bank. Included in the proposed assessment were penalties for failure to **file** a return (Rev. & Tax. Code, § 18681); failure to file a return after notice and demand (Rev. & Tax. Code, § 18687); and **negligence** (Rev. & Tax. Code, § 18684).

It is **well settled** that a Form 540 which fails to contain sufficient information from which respondent can compute and assess the tax liability **of** a particular taxpayer does not constitute a return. (See Charles C. Reiff, 77 T.C. 1169 (1981).) To qualify as a return, the form must state specifically the amounts of gross income and the deductions **and** credits claimed, (See Sally Conforte, 74 T.C. 1160 (1980).) Although a taxpayer may **specifically** claim the Fifth Amendment privilege against self-incrimination with **respect** to Particular questions on a return, he cannot make a blanket assertion of the privilege a basis for **refusing to disclose** any information. (See Edith G. White, 72 T.C. 1126 (1979).)

It is also well, settled that respondent's determinations of additional tax, including the penalties involved in this appeal, are presumptively correct, and that the burden of proving them erroneous is upon the taxpayer. (Todd v. McColgan, 89 Cal.App.2d 569 [201 P.2d 414] (1949); Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979.) Furthermore, where the taxpayer filed no return or otherwise refuses to cooperate in the ascertainment of his income, respondent has great latitude in determining the amount of tax liability. (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); George Lee Kindred, ¶ 79,457 P-H Memo. T.C. (1979).) Since **appellant has offered** no evidence to suggest that respondent's determination is erroneous, the determination must be sustained.

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Respondent's records indicate that \$125.93 was withheld for state income tax from appellant's wages. Accordingly, respondent has conceded that credit will be allowed for the \$125.93 and that **penalties** will be adjusted to reflect this payment.

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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 Gregory R. Cooper against a proposed assessment of personal income tax and penalties in the total amount of \$1,775 for 1979, be and the same is hereby modified in accordance with respondent's concession.. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, **California**, this **17th** day
of November, **1982**, by the State Board of Equalization,
with Board Members Mr. Bennett, Mr. **Collis**, Mr. **Dronenburg**
and Mr. Nevins present.

William M. Bennett, Chairman
Conway H. Collis, Member
Ernest L. Dronenburg, Jr., Member
Richard Nevins a., Member
_____, Member