

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
JOHN J. CLUTE }

For Appellant: John J. Clute,
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 John J. Clute against a proposed assessment of additional personal income tax and penalties in the total amount of \$1,264.50 for the year- 1975.

Appeal of John J. Clute

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 simply noted his objection to providing any relevant data based upon his Fifth Amendment privilege against self-incrimination. The subject proposed assessment was issued when appellant failed to comply with respondent's demand that he file a valid 1979 return. The proposed assessment was based upon information obtained from appellant's employer and included penalties for failure to file a return and failure to file upon notice and demand. After due consideration of appellant's protest, respondent affirmed the proposed assessment, thereby resulting in this appeal.

It is well settled that 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.) No such proof has been presented here.

In support, of his position, appellant has advanced the contention that his Fifth Amendment privilege against self-incrimination excuses his failure to file a return for the year in issue. We find that argument to be without merit. 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 469] (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 62], reh. den., 423 U.S. 991 [46 L.Ed.2d 311] (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.

Appeal of John J. Clute

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 John J. Clute against a proposed assessment of additional personal income tax and penalties in the total amount of \$1,264.50 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of December ,
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

_____, Member

_____ **Member**