



83-SBE-029

**BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA**

**In the Matter of the Appeal of)
LISELOTTE BUMP)**

**For Appellant: George Christian Bump
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 Liselotte Bump against proposed assessments of additional personal income tax and penalties in the total amounts of \$304.50 and \$572.88 for the years 1978 and 1979, respectively.

Appeal of Liselotte Bump

The issue presented by this appeal is whether appellant has established error in respondent's proposed assessments of personal income tax and penalties for the years 1978 and 1979.

On her California personal income tax forms 540 for the years 1978 and 1979, appellant failed to disclose information regarding her income, deductions, and credits. Instead, she filled in the blanks on the forms with the word "object." When appellant failed to comply with respondent's demand that she file valid returns for 1978 and 1979, respondent issued the subject proposed assessments, which included various penalties. Respondent used information from the Employment Development Department to determine appellant's income. Appellant protested the assessments, but still refused to file returns. The assessments were then affirmed, and this timely appeal followed.

Appellant contends that the assessments are excessive because her expenses and deductions were much more than those allowed in the notices of proposed assessment. She also argues that she validly claimed her Fifth Amendment right against self-incrimination on her tax return forms and that respondent's assessment, therefore, is a violation of her constitutional rights.

Respondent's determinations of, tax and the penalties involved in this appeal are presumptively correct and appellant bears the burden of showing that they are erroneous. (Appeal of George E. Boswell, Cal. St. Bd. of Equal., July 26, 1982; Appeal of K., L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) Appellant has presented no evidence regarding either her income or deductions and, therefore, we cannot say that respondent's determination of tax was incorrect. Similarly, with no evidence presented by appellant, we must conclude that the penalties were properly imposed.

With respect to the constitutional issues raised by appellant, we believe that the adoption of Proposition 5 on June 6, 1978, adding section 3.5 to article III of the California Constitution, precludes our determining that the statutory provisions involved are unconstitutional or unenforceable. Furthermore, this board has a well-established policy of abstention from deciding constitutional questions in appeals involving deficiency assessments. (Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.) We do note, however, that the arguments raised by appellant have been ruled on by the courts and found to be meritless. (See cases cited in Appeals of Fred R. Dauberger, et al., supra.)

Respondent's action, therefore, **must be sustained.**

Appeal of Liselotte Bump

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 Liselotte Bump against proposed assessments of additional personal income tax and penalties in the total amounts of \$304.50 and \$572.88 for the years 1978 and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of February', 1983, 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 J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member