



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES BLUTHENTHAL)

For Appellant: James Bluthenthal,
in pro. per.

For Respondent: James T. Philbin
Supervising Counsel

OPINION

This appeal is made pursuant to section 1859'3 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of James Bluthenthal against a proposed assessment of personal income tax and penalties in the total amount of \$2,644.30 for the year 1979.

Appeal of James Bluthenthal

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

Respondent received information indicating that appellant was required to file a California income tax return for 1979.. Respondent **so advised** appellant, and demanded that he file the required return; appellant did not respond. Thereafter, respondent issued a notice of proposed assessment based upon information received from the California Employment Development Department. The proposed assessment also included penalties for failure to file a return, failure to file **upon notice and demand**, and negligence. In his appeal from respondent's action in this matter, appellant has apparently adopted the **position** he advanced in an earlier appeal dealing with the year 1978 (Appeal of James A. Bluthenthal, Cal. St. Bd. of Equal., March 31, 1982), i.e., that the filing of an income tax return is voluntary and that, because he chose not to file a return, he incurred no tax liability.

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.

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.

Finally, as previously noted, appellant has previously brought an appeal before this board in which he raised the same frivolous argument rejected here. (Appeal of James A. Bluthenthal, supra.) As we stated in the Appeals of Robert R. Abelti, Jr., et al., decided on June 29, 1982, "[t]o pursue an appeal under such **circumstances** can only be **construed** as an attempt to obstruct and delay the appellate review process." We find that appellant instituted and has pursued this proceeding merely for the purpose of delay. Accordingly, pursuant to Revenue and Taxation Code section 19414, a penalty in the amount of five hundred dollars (\$500) shall be imposed against him.

Appeal of James Bluthenthal

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 Bluthenthal** against a proposed assessment of personal income tax and penalties in the total amount of **\$2,644.30** for the year 1979, be and the same is hereby sustained, and that a \$500 **delay** penalty under section 19414 be imposed against James Bluthenthal and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, this 1st day of March , 1983, by the **State Board** of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Nevins and **Mr.** Harvey present.

_____, Chairman
Ernest J. Dronenburg, Jr., Member
Conway H. Collis, Member
Richard Nevins, Member
Walter Harvey*, Member

*For Kenneth Cory, per Government Code 'Section 7.9