



83-SBE-052

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
M. LESLIE AND ALICE M. GRANT)

For Appellants: M. Leslie and **Alice M.** Grant,
in pro. per.

For Respondent: Daniel A. Borzoni
Allen R. Wildermuth
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 M. Leslie and Alice M. Grant against proposed assessments of personal income tax and **penalties** in the total amounts of **\$8,300.41, \$8,647.48, \$9,824.68 and \$10,595.37** for the years 1975, 1976, 1977, and 1978, respectively.

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The issue presented by this **appeal** is whether appellants have established error in respondent's proposed assessments of personal income tax or in the penalties assessed for the years in issue.

The **subject** proposed assessments were **issued** after appellants failed to comply with respondent's demand that they file **personal income** tax returns for the appeal years. Respondent based its estimation of appellants' income for the years in issue upon information reported in their 1973 and 1974 returns, plus growth and inflation factors of one percent for 1975 and 1976, and ten percent for 1977 and 1978. The proposed assessments include penalties for failure to file returns, failure to file upon notice and demand, failure to pay estimated income tax, and negligence. In their appeal ~~from respondent's action in~~ this matter, appellants have essentially 'adopted the position they advanced in an earlier appeal dealing with their tax liability for the year 1971 (Appeal of M. Leslie and Alice M. Grant, Cal. St. Bd. of Equal., Jan. 9, 1979), i.e., that **Federal Reserve notes** do not constitute "taxable income." In addition, appellants have advanced a host of other frivolous "arguments," each of which was rejected as being without merit in the Appeals of Fred R. Dauberger, et al., decided by **this board on March 31, 1982,**

Respondent's determinations of tax are presumptively correct, and appellants bear 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 2. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Where the taxpayer files no return and 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, ¶ 80,065 P-H Memo. T.C. (1980); George Lee Kindred, ¶ 79,457 P-H Memo. T.C. (1979).) In reaching this conclusion, the courts have invoked the rule that the failure of a party to introduce evidence which is within his control gives rise to the **presumption** that, if provided, it would be unfavorable. (See Joseph F. Giddio, supra, and the cases cited therein.) To hold **otherwise** would establish skillful concealment as an invincible barrier to the determination of tax

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liability. (Joseph F. Giddio, supra.) Since appellants have failed to **provide any evidence** establishing that respondent's determination was excessive or without foundation, we must conclude that they have failed to carry their burden of proof.

On the basis of the evidence before us, we conclude that respondent properly computed appellants' 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, appellants have previously brought an **appeal before** this board in which they raised the same frivolous arguments rejected here. (Appeal of M. Leslie and Alice M. Grant, supra.) As we stated in the Appeals of Robert R. Aboltin, 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 appellants instituted and have pursued this proceeding merely for the purpose of delay. **Accordingly**, pursuant to Revenue and Taxation Code section **19414, 17**, a penalty in the amount of five hundred dollars (\$500) shall be imposed against them.

17 Section 19414 provides as follows:

Whenever it appears to the State Board of Equalization or any court of this state that proceedings before it under this part have been instituted by the taxpayer merely for delay, a penalty in an amount not in excess of five hundred dollars (\$500) **shall** be imposed. Any penalty so imposed shall be paid upon notice and demand from the Franchise Tax Board and shall be collected as a tax.

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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 13595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of M. Leslie and Alice M. Grant against proposed assessments of personal income tax and penalties in the total amounts of **\$8,300.41, \$8,647.48, \$9,824.68, and \$10,595.37** for the years 1975, 1976, 1977, and 1978, respectively, be and the same is hereby sustained, and that a \$500 delay penalty under section 19414 be **imposed** against them 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