

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA.

In the Matter of the Appeal of }
WILLIE NICHOLS)

For Appellant: Willie Nichols,
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 Willie Nichols against a proposed assessment of additional personal income tax and penalty *in* the total amount of **\$1,047.26** for the **year** 1979.

Appeal of Willie Nichols

The sole issue is whether appellant has established error in respondent's proposed assessment.

After receiving information indicating that appellant was required to file a California income tax return for the year 1979, respondent advised appellant that it had no record of his having filed a return and demanded that he file one. When appellant did not respond to respondent's demand, respondent issued a notice of proposed assessment against appellant based upon information obtained from the California Employment Development Department. The proposed assessment included penalties for failure to file a return (Rev. & Tax. Code, § 18681), failure to file a return after notice and demand (Rev. & Tax. Code, § 18683), negligence (Rev. & Tax. Code, § 18684), and failure to pay the estimated tax (Rev. & Tax. Code, § 18685.05).

In his appeal, appellant stated in part: "The appellant does not agree with the **finding** of the **Franchise Tax Board**. The proposed assessment is in error in both procedure and substance. The appellant is not a taxpayer and does not owe any **tax** in this matter."

It is settled that respondent's determination of tax and penalty is presumptively correct, and the taxpayer bears the burden of proving it erroneous. (Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980.) An appellant's unsupported statement that he does not owe any tax is insufficient to overcome that presumption and to shift the burden of proof to respondent. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) Appellant has furnished no evidence to demonstrate that respondent's assessment is **in error** in any respect. **Appellant has** simply alleged that he is not a taxpayer and owes no tax. Under the circumstances, we can only sustain respondent's assessment..

Appeal of Willie Nichols

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 Willie Nichols against a proposed assessment of additional personal income tax and penalty in the total amount of **\$1,047.26** for the year 1979, be and the same is hereby sustained.

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