

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
NORMAN KURTH)

For Appellant: Norman Kurth,
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 Norman Kurth against a proposed assessment of personal income tax and penalties in the total amount of \$1,247.42 for the year 1979.

Appeal of Norman Kurth

The issue for determination is whether appellant has established any error in respondent's assessment.

Respondent **received** information indicating that appellant was required to file a California personal income tax return for 1979. Having no record of such a return being filed, respondent demanded that **appellant** file the required return. When appellant did not file a **return**, a proposed assessment was issued based on wage information that respondent had received from the Employment Development Department. The proposed assessment included penalties for failure to file a return, failure to file a return upon notice and demand, negligence, and failure to pay estimated tax.

It is settled law that respondent's **determina-**tion of tax and penalties, other than the fraud penalty, are presumed correct, and the burden rests upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeals of Steven T. Burns, et al., Cal. St. Bd. of Equal., Sept. 21, 1982; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.)

Appellant argues that he is not a **taxpayer**, that wages do not constitute income, and that respondent's determination violates the state and federal constitutions. However, appellant has not provided any evidence showing that the deficiency and penalties assessed by respondent are erroneous. Furthermore, the courts have consistently rejected these same **arguments** (see cases cited in Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982), and we see no reason to deviate from their decisions. Accordingly, respondent's action in this matter is sustained.