

Appeal of Ronald A. Rodriguez

The sole issue presented is whether respondent's assessment of **income tax** and penalties was proper.

Appellant filed a timely personal income tax form 540 for the year 1979, which disclosed no information with respect to his income, deductions or credits. Instead, in the spaces in which such information should have been entered, appellant wrote the word "object." Thereafter, respondent notified appellant that the form as filed was not a valid return and, accordingly, respondent demanded that appellant file a return containing the required information. **When** appellant failed to file the requested return, **respondent** issued appellant a proposed assessment based on a wage statement **which** had been received from appellant's employer. Penalties for failure to file a timely return [Rev. & Tax. Code, § 18681) and for failure to file a return **after** notice and **demand** (Rev. & Tax. Code, § 18683) were **added** to the proposed assessment. Appellant protested the assessment, but still declined to file a valid return. The **basis** for appellant's refusal to file a proper return was that the **requirement** to furnish income information violated his constitutional right against self-incrimination. Respondent's denial of his protest led to this timely-appeal.

It is now well settled that respondent's determinations of tax and penalties (other than fraud) are presumed correct, and that the taxpayer has the burden of proving them **erroneous**. (Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., **Feb. 6, 1980**. See **also**, Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.)

Appellant's only contention throughout this proceeding has been that the requirement to furnish income information violated his constitutional right against self-incrimination. This argument. **is** substantially similar to those discussed in numerous other cases before this board. (See, e.g., Appeal of Marvin L. and Betty J. Robey, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Ruben B. Salas, Cal. St. Bd. of Equal., Sept. 27, 1978; Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) In each of these cases, we have found the taxpayer's contention to be totally without merit. First, we have held that the adoption of Proposition 5 by the voters on June 6, 1978,

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adding section 3.5 to article III of the California Constitution, precludes this **board from** determining that the statutory provisions involved are unconstitutional or unenforceable. Second, we have noted that this board has had a **long-established** policy of abstaining from deciding constitutional questions in appeals involving deficiency assessments. (Appeal of Marvin L. and Betty J. Robey, supra; Appeal of Ruben B. Salas, supra.) This policy is based upon the absence of specific **statutory** authority which would allow the Franchise Tax Board to obtain judicial review of an adverse decision in a case of this type, and our belief that such review should be available for questions of constitutional importance. This policy properly applies to this appeal. Moreover, we have noted that in appropriate cases where these constitutional issues have been **considered** on the merits, they have been rejected, (Appeal of Marvin L. and Betty J. Robey, supra, citing, e.g., United States v. Sullivan, 274 U.S. 259 [71 L.Ed. 10371 (1927)]; United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 469] (1973).)

Finally, we note that appellant's reliance upon Garner v. United States, 424 U.S. 648 [47 L.Ed.2d 370] (1976), for the proposition that the constitutional right against self-incrimination allows him to refuse to submit a valid return is misplaced. In Garner, the Supreme Court noted that some types of information might be so neutral that the **privilege could** rarely, if ever, be asserted to prevent their disclosure. The claims of constitutional privilege considered were only those justified by a fear of self-incrimination other than under the tax laws. (Garner v. United States, supra, 424 U.S. at p. 650.) **The Garner** decision did not question the validity of the holding in United States v. Sullivan, supra, that proper tax **returns** must be filed. **Accordingly**, contrary to appellant's contention, Garner is not authority that the constitutional **right against** self-incrimination may preclude a taxpayer from disclosing the amount of his income or filing a valid return.

For the reasons set forth above, we conclude that appellant has failed to **carry** his burden of proof that respondent's determination of tax is erroneous. In addition, with regard to the penalty assessments here in issue, as we noted in Appeal of Arthur W. Keech, supra, a tax return form which does not contain any **information** regarding the taxpayer's income and deductions does not constitute a valid return. Therefore, under Revenue and Taxation Code sections 18681 and 18683, the assessments

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for penalties for failure to file a timely return and for failure to file a return after notice and demand, respectively, must be sustained unless the taxpayer establishes that such failure was due to reasonable cause and not due to willfull neglect. Appellant has 'not addressed himself to this point. Since we fail to -perceive any reasonable basis' for his refusal to file a valid return, the penalties must also be sustained.

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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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Ronald A. Rodriguez against a proposed assessment of additional personal income tax and **penal-**ties in the total amount of **\$2,179.50** for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April , 1983, by the State Board of Equalization, with Board **Members** Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

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

*For Kenneth Cory, per Government Code Section 7.9