

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)  
JEKRY L. BALDWIN, ET AL. )

Appearances:

For Appellant: Norm Youngs  
Your Heritage Protection Association

For Respondent: Gary M. Jerrit  
Carl G. Knopke  
Noel J. Robinson  
C o u n s e l

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the actions of the Franchise Tax Board on the protests of Jerry L. Baldwin, et al., against proposed assessments of additional personal income tax and penalties in the amounts and for the years as follows:

Appeals of Jerry L. Baldwin, et al.

| <u>Appellants</u>          | <u>Year(s)</u> | <u>Proposed<br/>Tax</u> | <u>Assessments<br/>Penalties</u> |
|----------------------------|----------------|-------------------------|----------------------------------|
| Jerry L. Baldwin           | 1979           | \$ 936.00               | \$ 468.00                        |
|                            | 1978           | <b>1,135.00</b>         | 567.50                           |
| Bernard J. Baril           | 1980           | <b>1,146.00</b>         | 630.00                           |
| Virgil D. Barnes           | 1979           | <b>1,464.00</b>         | 732.00                           |
|                            | 1980           | <b>1,256.00</b>         | 628.00                           |
| Kay A. Barr                | 1979           | <b>1,695.00</b>         | <b>1,040.29</b>                  |
| <b>Mary</b> A. Barr        | 1980           | <b>1,113.00</b>         | 612.15                           |
| Elizabeth <b>Basham</b>    | 1980           | 239.00                  | <b>119.50</b>                    |
| Roger R. <b>Berthiaume</b> | <b>1979</b>    | 680.00                  | <b>340.00</b>                    |
|                            | <b>1980</b>    | <b>1,498.00</b>         | <b>823.90</b>                    |
| Roger Bland                | 1980           | <b>1,058.00</b>         | <b>581.90</b>                    |
| Dwight Blekebery           | 1980           | <b>1,168.00</b>         | <b>642.40</b>                    |
| Lyle D. Boliou             | 1980           | <b>1,058.00</b>         | <b>529.00</b>                    |
| Rudy Castro                | 1980           | <b>1,201.00</b>         | <b>660.55</b>                    |
| Carlos Cisneros            | 1980           | <b>2,173.00</b>         | <b>1,195.15</b>                  |
| Rodney Cole                | 1980           | <b>1,531.00</b>         | 842.05                           |
| <b>Raymond V.</b> Corn     | 1980           | <b>3,158.00</b>         | <b>1,736.90</b>                  |
| George T. Cuda             | 1979           | <b>1,112.00</b>         | 556.00                           |
| <b>Fernand</b> C. Cyr      | 1980           | <b>2,070.00</b>         | <b>1,035.00</b>                  |
| James R. <b>DellaValle</b> | 1980           | <b>1,740.00</b>         | 870.00                           |
| Joseph L. Desilets         | 1980           | <b>1,762.00</b>         | <b>881.00</b>                    |
| R. Donovan                 | 1979           | <b>1,277.00</b>         | 702.35                           |
| Mark J. Dowse              | 1979           | <b>2,586.00</b>         | <b>1,293.00</b>                  |
| William A. Easter          | 1980           | <b>3,283.00</b>         | <b>1,641.50</b>                  |

Appeals of Jerry L. Baldwin, et al.

| <u>Appellants</u>   | <u>Year(s)</u> | <u>Proposed<br/>--Tax--</u> | <u>Assessments<br/>Penalties</u> |
|---------------------|----------------|-----------------------------|----------------------------------|
| Randall W. Ebersole | 1980           | <b>\$3,561.00</b>           | <b>\$1,958.55</b>                |
| R. D. Ellis         | 1980           | <b>2,321.00</b>             | <b>1,160.50</b>                  |
| Albert C. Erhard    | 1980           | <b>1,410.00</b>             | 680.00                           |
| John W. Erwin       | 1980           | 528.00                      | <b>290.40</b>                    |
| Lollie Evans        | 1979           | 123.00                      | 67.65                            |
| Richard F. Fiedler  | 1980           | <b>1,048.00</b>             | 524.00                           |
| Cyril W. Fischbach  | 1980           | 259.00                      | 142.45                           |
| Frank F. Fisher     | 1980           | <b>2,239.00</b>             | <b>1,231.45</b>                  |
| Rodger Flatt        | 1979           | 662.00                      | 331.00                           |
| Roy Eugene Forguson | 1980           | <b>1,223.00</b>             | 611.50                           |
| Donald C. Fuller    | 1979           | <b>1,662.00</b>             | 831.00                           |
| Jesse Gains, Jr.    | 1980           | 850.00                      | 425.00                           |
| Sandra Gasswint     | 1979           | 244.00                      | 149.75                           |
| Edward B. Greer     | 1978           | <b>15,000.00</b>            | <b>7,500.00</b>                  |
| Dennis K. Hendrix   | 1980           | <b>1,245.00</b>             | 622.50                           |
| Felix M. Hernandez  | 1980           | 958.00                      | 526.90                           |
| Kerry D. Hicks      | 1980           | <b>2,407.00</b>             | <b>1,203.50</b>                  |
| Barbara Hinke       | 1980           | <b>1,509.00</b>             | 829.95                           |
| Grant F. Hintze     | 1979           | <b>1,442.00</b>             | <b>841.78</b>                    |
| Terry Hodge         | 1979           | <b>1,849.00</b>             | 924.50                           |
| Vincent A. Hughes   | 1980           | 998.00                      | 499.00                           |
| William F. Hurd     | 1979           | 813.00                      | 406.50                           |
| Norman E. Ireton    | 1980           | <b>2,895.00</b>             | <b>1,592.25</b>                  |
| Helen Louise Johns  | 1979           | 341.00                      | 170.50                           |
| Robert Kessener     | 1978           | <b>644.10</b>               | 365.58                           |

Appeals of Jerry L. Baldwin, -et al.

| <u>Appellants</u>       | <u>Year(s)</u> | <u>Proposed<br/>Tax</u> | <u>Assessments<br/>Penalties</u> |
|-------------------------|----------------|-------------------------|----------------------------------|
| John M. Lane            | <b>1979</b>    | \$ <b>893 .00</b>       | \$ 507.01                        |
| <b>Kay N.</b> Leibfreid | <b>1979</b>    | 1,288 .00               | 708.40                           |
| Larry Lewiston          | <b>1979</b>    | <b>1,244.00</b>         | 763.49                           |
| Richard Mangrum         | 1980           | 938 .00                 | <b>515 .90</b>                   |
| Reno C. Marchioro       | 1980           | <b>1,498.00</b>         | <b>749.00</b>                    |
| Wayne Mauldin           | 1980           | <b>2,810.00</b>         | <b>1,405.00</b>                  |
| Donald E. Marsili       | 1979           | <b>1,772.00</b>         | 886.00                           |
|                         | 1980           | <b>1,894.00</b>         | 947.00                           |
| 'James McArdle          | <b>1980</b>    | 724.00                  | 362.00                           |
| Kenneth M. McCraw       | 1980           | <b>1,795.00</b>         | 897.50                           |
| Jack McFadden           | <b>1980</b>    | 544.00                  | 299.20                           |
| Thomas J. Merendino     | <b>1979</b>    | <b>2,751.00</b>         | <b>1,550.46</b>                  |
|                         | 1980           | <b>2,081.00</b>         | <b>1,144.55</b>                  |
| Floyd Messer            | 1979           | <b>2,553.00</b>         | <b>1,276.50</b>                  |
| Robert A. Miller        | 1980           | 264.00                  | 132.00                           |
| Lowell Milligan         | 1980           | <b>1,718.00</b>         | 944.90                           |
| Sally L. Milligan       | 1979           | 43.00                   | 26.39                            |
| Phyllis Millspaugh      | 1979           | 565.00                  | 282.50                           |
|                         | 1980           | 544.00                  | 299.20                           |
| William C. Miracle      | 1980           | 451 .00                 | 225.50                           |
| Cleo Ann Mitchell       | 1979           | <b>1,233.00</b>         | 616.50                           |
| Caffry Moses, Jr.       | 1979           | <b>1,739.00</b>         | 973.95                           |
| Houston R. Murphy       | 1980           | <b>1,960.00</b>         | 980.00                           |
| Charles Wayne Natloh    | 1980           | 1,465.00                | 732.50                           |
| James Nebo              | 1979           | <b>1,332.00</b>         | 666.00                           |

Appeals of Jerry L. Baldwin, et al.

| <u>Appellants</u>    | <u>Year(s)</u> | <u>Proposed<br/>Tax</u> | <u>Assessments<br/>Penalties</u> |
|----------------------|----------------|-------------------------|----------------------------------|
| Ury Paul Nekrassoff  | 1978           | \$3,115.00              | \$1,738.55                       |
|                      | 1979           | 3,538.60                | 2,172.00                         |
| German Nelson        | 1980           | 2,209.00                | 1,104.50                         |
| Gordon K. Nelson     | 1980           | 751.00                  | 375.50                           |
| Raymond Nelson       | 1980           | 1,028.00                | 514.00                           |
| T. Nielsen           | 1979           | 493.00                  | 246.50                           |
| Milton Noel, Jr.     | 1980           | 1,388.00                | 694.00                           |
| Juanita Norman       | 1979           | 763.00                  | 381.50                           |
| Ray Nowicki          | 1979           | 298.00                  | 95.20                            |
| John H. Nunley       | 1980           | 2,392.00                | 1,196.00                         |
| Patrick M. O'Brien   | 1979           | 446.00                  | 223.00                           |
| Robert F. Olson      | 1980           | 850.00                  | 425.00                           |
| Richard P. Orduno    | 1978           | 246.20                  | 123.10                           |
|                      | 1979           | 275.00                  | 137.50                           |
| W. D. Ornelaz        | 1980           | 1,212.00                | 606.00                           |
| Ernest R. Papperman  | 1980           | 1,553.00                | 776.50                           |
| Charles G. Parge     | 1979           | 1,079.00                | 539.50                           |
| Robert L. Pasco      | 1980           | 680.00                  | 374.00                           |
| William F. Patterson | 1980           | 1,421.00                | 781.55                           |
| Louis J. Phillips    | 1979           | 1,277.00                | 638.50                           |
|                      | 1980           | 1,608.00                | 884.00                           |
| James R. Pratt       | 1979           | 533.00                  | 266.50                           |
| Peter R. Raccio      | 1978           | 1,988.00                | 994.00                           |
| Orick Ratzlaff       | 1980           | 1,179.00                | 648.45                           |
| David E. Radley      | 1980           | 2,370.00                | 1,185.00                         |

Appeals of Jerry L. Baldwin, et al.

| <u>Appellants</u>         | <u>Year(s)</u> | <u>Proposed<br/>Tax</u> | <u>Assessments<br/>Penalties</u> |
|---------------------------|----------------|-------------------------|----------------------------------|
| Steven D. Rea             | <b>1 9 7 9</b> | \$2,135.00              | \$1,174.25                       |
| John R. Rinehart          | <b>1979</b>    | 1,013.00                | <b>506.50</b>                    |
| <b>Gerardo</b> Rodriguez  | <b>1979</b>    | 1,156.00                | <b>5'78.00</b>                   |
| Gilbert Rojo              | <b>1978</b>    | <b>379.81</b>           | <b>1139.90</b>                   |
|                           | <b>19'79</b>   | <b>418.00</b>           | 229.90                           |
|                           | <b>1979</b>    | 1,893.00                | 1,041.15                         |
| Eric Rubel                | <b>1979</b>    | 1,376.00                | 688.00                           |
| R. Salvo                  | <b>1979</b>    | <b>212.00</b>           | <b>106.00</b>                    |
| Leonard S. Santos         | <b>1979</b>    | 1,497.00                | <b>748.50</b>                    |
| Donald Shute              | <b>1979</b>    | 1,365.00                | <b>6132.50</b>                   |
| Diana Silveira            | <b>1980</b>    | <b>796.00</b>           | 437.80                           |
| R. W. Simmons             | <b>1980</b>    | <b>409.00</b>           | <b>204.50</b>                    |
| Robert D. Slavik          | 1980           | 2,059.00                | 1,132.45                         |
| M. Ellis Smith            | <b>1980</b>    | 1,289.00                | 644.50                           |
| Anthony M. Sotelo         | 1980           | <b>608.00</b>           | <b>334.40</b>                    |
| Wanda L. Spralding        | 1980           | <b>249.00</b>           | <b>124.50</b>                    |
| Fred J. Staible           | 1580           | 1,916.00                | 958.00                           |
| Ken Stiles                | 1980           | 1,927.00                | 963.50                           |
| Gerald S. Stoddard        | 1980           | 1,696.00                | <b>932.80</b>                    |
| Geraldine Stotler         | 1979           | <b>298.00</b>           | <b>149.00</b>                    |
| Bernard E. Taber          | 1980           | 1,058.00                | 529.00                           |
| Timothy S. <b>Taecker</b> | 1980           | 1,432.00                | 787.60                           |
| Bruce Talbot              | 1979           | <b>689.00</b>           | <b>344.50</b>                    |
| Roger J. Tousignant       | 1980           | <b>928.00</b>           | <b>510.40</b>                    |
| J. E. <b>Tharp</b>        | 1980           | 1,960.00                | 980.00                           |

Appeals of Jerry L. Baldwin, et al.

|                    |      |            |           |
|--------------------|------|------------|-----------|
| William Tuttle     | 1979 | \$1,574.00 | \$ 787.00 |
| R. Valentine       | 1980 | 1,971.00   | 985.50    |
| Darell Van Sant    | 1980 | 2,805.00   | 1,402.50  |
| James H. White     | 1979 | 3,026.00   | 1,513.00  |
| Norman L. Williams | 1979 | 1,398.00   | 699.00    |
|                    | 1980 | 1,751.00   | 963.05    |

The subject appellants did not file California personal income tax returns, and take the position that they are not taxpayers and do not owe any tax. Why they refused to file returns, respondent issued notices of proposed assessment based upon information received from the California Employment Development Department. The proposed assessments also included various penalties, including those for failure to file a return and for failure to file after notice and demand.

It is well settled that respondent's determinations of additional tax, including the penalties involved in these appeals, are presumptively correct, and the burden is upon the taxpayers to prove them erroneous. (T o d d v. McColgan, 89 Cal.App.2d 509 [201 P.2d 4141 (1949)]; Appeal of Donald W. Cook, Cal. St. Bd. of Equal., May 21, 1980; Appeal of Arthur I. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Here the appellants clearly have not carried their burden. The skeleton appeal filed in each instance contained identifying information, an expression of general disagreement with the proposed assessments, and an allegation that the appellant did not owe any personal income tax. No additional facts or authority for their position was presented. It appears that all of the issues raised herein have been reviewed in detail in our opinion on March 31, 1982, in the Appeals of Fred R. Dauberger, et al., and we conclude that the Dauberger decision is determinative of these appeals. In that decision, we found no merit in the contentions made by the taxpayers.

In the Dauberger opinion we noted that the federal authorities have called for more decisive treatment of tax protester cases and we observed that some of those cases had resulted in the imposition of a penalty for delay pursuant to section 6673 of the Internal Revenue Code. (See, e.g., Roger D. Wilkinson, 71 T.C. 633 (1979); Gordon B. Leitch, Jr., ¶ 81,504 P-H Memo. T.C. (1981); James S.

Appeals of Jerry L. Baldwin, et al.

Babcock, ¶ 82,090 P-II Memo. T.C. (1981); Eugene J. May, ¶ 81,119 P-H Memo. T.C. (1981); Ephraim J. Swann, ¶ 81,236 P-H Memo. T.C. (1981); Princess E. L. Lingham, ¶ 81,042 P-H Memo. T.C. (1981).) We then pointed out that section 19414 of the California Revenue and Taxation Code was patterned after section 6673 and specifically provides:

Whenever it appears to the State Board of Equalization or any court of record 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.

We then went on to warn that we would not condone repeated appeals where the arguments have been considered and rejected previously, and we advised all individuals who proceed with frivolous cases that serious consideration would be given to the imposition of the penalty under section 19414. Therefore, it is with great concern that we note that several appellants in the present matter, i.e., Bernard J. Baril, Kay A. Barr, Mary A. Barr, Roger Bland, Dwight Blekeberg, Raymond V. Corn, Joseph L. Desilets, Randall W. Ebersole, John W. Erwin, Cyril W. Fischbach, Frank F. Fisher, Jack McFadden, Lowell Milligan, Ray Nowicki, W. D. Ornelaz, Robert L. Pasco, William F. Patterson, Orick Ratzlaff, Diana Silveira, M. Ellis Smith, Anthony M. Sotelo, Fred J. Staible, Gerald S. Stoddard, and Roger J. Tousignant, have made and had identical arguments rejected in previous decisions by this board as being totally frivolous and without merit. To pursue an appeal under such circumstances can only be construed as an attempt to obstruct and delay the appellate review process. This cannot be tolerated because it disrupts the orderly review of serious appeals by this board and forces the state to incur unnecessary expenses. Consequently, we find that the aforementioned twenty-four appellants have instituted and pursued their proceedings merely for the purpose of delay and a penalty in the amount of five hundred dollars (\$500) shall be imposed against each of them.



