

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of')
JOHN H. MERLET)

For Appellant: John H. Merlet,
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 John H. Merlet against a proposed assessment of additional personal income tax and a penalty in the total amount of \$1,060.50 for the year 1979.

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After being informed that appellant had received taxable income in 1979, respondent notified him that he was required to file a 1979 state personal income tax return and that there was no record of his having done so. When appellant failed to answer respondent's demand, respondent issued a proposed assessment based upon information from the Employment Development Department. The information disclosed that General Electric Company had paid appellant \$16,515 in 1979. Respondent also imposed 25 percent penalties for failure to file (Rev. & Tax. Code, § 18681) and failure to file after notice and demand (Rev. & Tax. Code, § 18683).

Appellant claims that he is not a taxpayer and that the dollars he has earned are not taxable as income. We discussed and disposed of these issues in the Appeals of Fred R. Dauberger, et al., decided by this board on March 31, 1982. We there found the above contentions to be without merit and we perceive no reason to reach a different conclusion in the instant case. (See also United States v. Gardiner, 531 F.2d 953 (9th Cir.), cert. den., 429 U.S. 853 [50 L.Ed.2d 128] (1976); Appeal of Terrence D. Oaks, Cal. St. Bd. of Equal., June 28, 1977.)

Appellant also argues that he is not required to file a return: however, he has submitted no evidence to support his claim. When a taxpayer fails to file a return, respondent may calculate his income from available sources. The resulting determination of tax and penalties is presumed correct, and the taxpayer bears the burden of proving it incorrect. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of William Steinsmith, Cal. St. Bd. of Equal., May 21, 1980; Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) Everyone who is a California resident or who has received California-source income in the taxable year must submit a state personal income tax return if his or her adjusted gross income for that year exceeds certain minimum amounts provided in Revenue and Taxation Code section 18401. Respondent reasonably reconstructed appellant's income for 1979 from Employment Development Department information and concluded that his adjusted gross income exceeded the section 18401 minimums. (Appeal of David R. Bengtson, Cal. St. Bd. of Equal., June 29, 1982.) Appellant has presented no evidence to meet his burden of refuting respondent's calculations. We must therefore conclude that respondent's determinations of his earnings, tax due and penalties were correct. (Appeal of Francis J. Pearson, Cal. St. Bd. of Equal., May 19, 1981.)

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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 John H. Merlet against a proposed assessment of additional personal income tax and a penalty in the total amount of **\$1,060.50** for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this **21st** day of June , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. **Dronenburg** and Mr. Nevins present.

William M. Bennett _____, Chairman
Conway H. Collis - I - - - - - , Member
Ernest J. Dronenburg, Jr. _____, Member
Richard Nevins I - - - . - - - , Member
_____, Member