



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HANS BOTHKE)

For Appellant: Hans Bothke,
in pro. per.

For Respondent: Jean Ogròd
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 Hans Bothke against a proposed assessment of personal income tax and a penalty in the total amount of \$1,639.22 for the year 1979.

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During the year at issue, appellant was employed as a piping supervisor by **Fluor** Engineers and Constructors (**Fluor**). He filed a 1979 California personal income tax return which reported receipt of **\$31,954.84** in wages from **Fluor**, **\$1,194.75** in cash from a vending machine business, and \$14.11 in interest income. On the return, he treated his wages from **Fluor** and the **\$1,194.75** cash as gross receipts from an independent trade or **business**, subtracted therefrom a series of "business expenses," and took various itemized deductions. He then discounted the remainder to reflect his opinion of the fair market value of the Federal Reserve notes and of the salary checks he had received, and reported his tax liability as zero.

Pursuant to an initial review of appellant's return and a subsequent protest hearing, respondent adjusted his itemized deductions, allowed a business loss that he had apparently incurred in operating two vending machines, and rejected his attempt to account for his checks and cash at less than face value. Respondent also denied his claimed business expense deductions for commuting costs between his home and **Fluor**, homeowner's association fees, home utility payments, purchases of non-specialized clothing for work, and personal "support" costs. Respondent's proposed assessment included a penalty for underpayment of estimated tax.

It is well settled that respondent's determinations of additional tax and penalties are presumptively correct, and the taxpayer bears the burden of proving that they are incorrect. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) Appellant has not shown any error in the revised assessment. The substantive **issues he** raises in this case are essentially the same as those that were considered and rejected by the Tax Court of the United States in Hans Bothke, ¶ 80,001, P-H Memo. T.C. (1980), affd. without op., 667 F.2d 1030 (9th Cir. 1981), cert. den., -- U.S. -- [74 L.Ed.2d 112] (1982), and by this board in his prior appeals to this forum. (Appeal of Hans J. Bothke, Cal. St. Bd. of Equal., June 29, 1982; Appeals of Hans J. Bothke, Cal. St. Bd. of Equal., May 21, 1986,) In those cases, the tax court and this board firmly rejected his attempts to deduct virtually the same personal living expenses that he deducted in the instant case, holding that such costs are not deductible under either state or federal law. Also rejected were his efforts to reduce his income to an alleged "fair market" value of his Federal Reserve notes and salary checks. The facts and the law which dictated the result in those cases have not changed in a manner that would warrant our reaching a contrary result in the present case.

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Appellant additionally challenges this state's power to tax income and Federal Reserve notes, and raises other constitutional objections to respondent's proposed assessment. We disposed of these arguments in the Appeals of Fred R. Dauberyer, et al., decided by this board on **March 31, 1982**, as well as in numerous other cases wherein we noted that it has been our consistent policy not to rule on constitutional questions in appeals involving deficiency assessments. (See, e.g., Appeal of Leon C. Harwood, Cal. St. Bd. of Equal., Dec. 5, 1978; Appeal of William F. and Dorothy M. Johnson, Cal. St. Bd. of Equal., Oct. 6, 1976.)

Appellant also argues that respondent's brief in this appeal was unacceptably late because it was filed with the board two months after appellant timely filed his brief. However, this board's hearing procedures, as provided in title 18 of the California Administrative Code, sections 5001 et seq., explain that a preparation time of two months is not necessarily unacceptably late. Section 5026 states in part, "After the [taxpayer's] filing of an appeal is complete, the Franchise Tax Board will be allowed not less than 30 days in which to file a memorandum in **support of** its position." (Emphasis added.) Thirty days is not a regulatory maximum.

Appellant continues to raise arguments that this board rejected, in his earlier appeals, as being completely frivolous. It is our view that his repeated appeals constitute an attempt to obstruct and hinder the appellate review process. Section **19414** of the Revenue and Taxation Code permits this board to impose, upon a taxpayer who proceeds with frivolous appeals "merely for delay, a penalty in an amount not in excess of five hundred dollars (\$500)" (See, e.g., Appeal of William Ramsey, Cal. St. Bd. of Equal., Aug. 17, 1982.) **We find that** appellant has pursued this proceeding merely for the purpose of delay; consequently, a penalty in the amount of five hundred dollars (\$500) shall be **imposed** against him.

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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 Co'de, that the action of the Franchise Tax Board on the protest of Hans Bothke against a proposed assessment of personal income tax and a penalty in the **total. amount of \$1,639.22** for the year **1979**, be and the same is hereby sustained, and that the **\$500** delay penalty under Section 19414 be imposed against appellant, and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, **this** 28th day of **July**, **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**