



83-SBE-205

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
MILDRED C. JOHNSON }

For Appellant: Bradford E. **Henschel**
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 Mildred C. Johnson against a proposed assessment of personal income tax and penalties in the total amount of **\$1,178.57** for the year 1979.

Appeal of Mildred C. Johnson

Respondent had no record of appellant having filed a **1979** California personal income tax return, and after receiving information indicating that appellant was required to file a return for that year, respondent demanded that she file the required return. When appellant failed to respond, respondent issued a proposed assessment of tax based upon wage information received from appellant's employer. It also imposed penalties for failure to file a return, failure to file a return after notice and demand, negligence, and failure to pay estimated tax. (Rev. & Tax. Code, §§ 18681, 18683, 18684, and 18685.05.) After considering appellant's protest, respondent affirmed the proposed assessment, and this appeal followed.

Appellant has established that her employer withheld \$87.68 in state income tax from her wages and that respondent failed to credit her with this amount. Respondent has agreed that, if its position is upheld on appeal, it will revise the proposed assessment to account for the amount withheld and will adjust the penalty imposed pursuant to section 18681 of the Revenue and Taxation Code.

Appellant contends that respondent incorrectly refused to allow her a credit for the State Disability Insurance Fund (SDI) contributions she made in **1979**. Section **17061** of the Revenue and Taxation Code allows a credit for SDI contribution only when the taxpayer is entitled to a refund of excess contributions for state disability. Appellant does not assert that she made such excess contributions. On the contrary, she apparently contends that a credit should be allowed for the entire amount of her SDI contributions. Since the statute does not allow such a credit, we must conclude that respondent **correctly** denied the claimed credit. Appellant contends that to deny such a credit results in impermissible double taxation. We reject this argument. Double taxation results only when more than one tax is imposed during the same period, upon the same activity or incident for the same purpose by the same taxing agency. (Associated Home Builders Etc., Inc. v. City of Walnut Creek, 4 Cal.3d 633 [94 Cal.Rptr. 630] (1971); Fox Etc. Corp. v. City of Bakersfield, 36 Cal.2d 136 [222 P.2d 879] (1950).) SDI contributions and personal income tax are imposed for different purposes. (Compare Unemp. Ins. Code, §§ 3301, 3012 with Rev. & Tax. Code, § 19351.) Therefore, the payment of SDI contributions and personal income tax does not result in double taxation.

Appeal of Mildred C. Johnson

Respondent's determinations of tax and penalties are presumed correct, and the taxpayer has the burden of proving that, they are wrong. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) Appellant contends that the proposed assessment is incorrect in several respects, but she has presented no evidence in support of her position. She also asserts that the penalties should not be imposed because she filed the required income tax return and provided respondent with all requested information. The evidence presented in support of this, a copy of the first page of a form 540, is insufficient for several reasons. The form was altered so that even though the blanks were filled in, no meaningful information was provided; **there is** no evidence that the rest of the form 540 was completed; and finally, there is no evidence that the purported return was ever sent to respondent. Since appellant has not established any error in the proposed assessment of tax and penalties, we must conclude that it is correct.

Finally, appellant raises numerous constitutional and statutory objections to the imposition of personal income tax and penalties. We are precluded by section 3.5 of article III of the California Constitution from determining that the statutes involved are unconstitutional or unenforceable. Furthermore, this board has a well established policy of abstention from deciding constitutional questions in appeals involving deficiency assessments. (Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.) The statutory arguments raised by appellant have previously been considered **by** this board and have been determined to be without merit. (Appeals of Fred R. Dauberger, et al., supra; Appeal of Mildred C. Johnson, Cal. St. Bd. of Equal., Sept. 29, 1981.) We believe that further discussion of **these** objections is unnecessary.

For the above reasons, respondent's action will be sustained.

Appeal of Mildred C. Johnson

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 Mildred C. Johnson against a proposed assessment of personal income tax and penalties in the total amount of **\$1,178.57** for the year 1979, is hereby modified to reflect the allowance of a credit in the amount of \$87.68. In all other respects, **the action** of the Franchise Tax Board is hereby sustained.,

Done at Sacramento, California, this 15th day Of September? 1983, by the State Board of Equalization, with Board Members Mr. Bennett; Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

<u>William M. Bennett</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Richard Nevins</u> - - - -	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9