

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of)
DONALD R. PLUNKETT)

For Appellant: Donald R. Plunkett,
in pro. per.

For Respondent: Allen R. Wildermuth
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 Donald R. Plunkett against a proposed assessment of additional personal income tax and penalty in the total amount of **\$3,548.75** for the year 1979.

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The issue in this matter is whether appellant has shown any error in respondent's proposed assessment.

Pursuant to section 17299 of the Revenue and Taxation Code, respondent received notice that appellant was in violation of the Building and Zoning Laws of the City of Lakewood. Respondent searched its files to see if appellant had claimed any deduction for the identified substandard housing. As a result of this search, respondent determined that appellant had not filed a return for f.979. Respondent then demanded that appellant file the required return, but he did not comply. A notice of proposed assessment followed, including a penalty for failure to provide information requested.

The referenced assessment was based on respondent's investigation showing that the substandard housing owned by appellant consisted of seven single-family rental-units. Respondent estimated that each of these units would rent for \$400 per month and collectively would produce rental income of \$35,000 per year. Although appellant protested the proposed assessment, it was ultimately affirmed, leading to this appeal.

It is well settled that respondent's determinations of tax and penalties are presumptively 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; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.)

Where a taxpayer fails to file a proper tax return, respondent is permitted to reconstruct income, reasonably, from any information available. (Rev. & Tax. Code, § 18648.) Furthermore, if a taxpayer provides no information regarding income and deductions, respondent is authorized to compute income by whatever method will, in its opinion, clearly reflect the taxpayer's income. (Harold E. Harbin, 40 T.C. 373 (1963); Appeal of John and Codelle Perez, Cal. St. Bd. of Equal., Feb. 16, 1971.) No particular method is required since circumstances will vary in individual cases. (Harold E. Harbin, supra; Appeal of John and Codelle Perez, supra.)

Appellant makes several statements criticizing respondent's calculations of rental income as not being based on fact. However, in none of these declarations has appellant disclosed what rents he actually received. He has thus offered no evidence to rebut the assumptions on which respondent based its proposed assessment. The

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only exception concerns a claim that the rental properties were lost in foreclosure proceedings. Respondent has been able to verify that title to some of the properties changed in December of 1979. **Respondent asserts,** however, that the ownership change should not result in a change to its proposed assessment as it is not known whether the appellant sold the properties and might be required to report capital gains. There is no merit to that argument, for there is simply no evidence that the properties were sold. Moreover, the question of whether any capital gains should have been reported by appellant is not before us in this appeal. We are concerned here with the correctness of a proposed assessment based on reconstructed, rental income. On the basis of the aforementioned factors, we believe that respondent's proposed assessment should be adjusted to exclude the December rents for the properties whose ownership changed hands in that month.

We believe also that a mathematical adjustment should be made to appellant's proposed assessment. The proposed assessment is based on an annual rental income of \$35,000. Yet our calculations show that \$400 monthly rent for seven units projected over twelve months yields a **yearly** rental income of \$33,600. We believe that this latter figure should be used as the basis for the proposed assessment and taken into account for the aforementioned **adjustment of** the December rents.

In all other respects, we find respondent's action in this matter proper and deserving of being upheld. This finding extends also to the penalty involved since no reasonable cause was shown for failure to furnish the information requested. (Rev. & Tax. Code, § 18683.)

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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 Donald R. Plunkett against a proposed assessment of additional personal income tax and penalty in the total amount of \$3,548.75 for the year 1979, be and the same is hereby modified in accordance with the findings made in this opinion. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 26th day of October , 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

J. Ernest Dronenburg, Jr. , Member

Richard Nevins - I - , Member

Walter Harvey* - , Member

*For Kenneth Cory, per Government Code section 7.9