



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of )  
FRANK D. AND ELSE O'NEILL )

Appearances:

For Appellants: Amos Bruce  
For Respondent: Noel J. Robinson  
Kendall E. Kinyon  
Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Frank D. and Else **O'Neill** against proposed assessments of additional personal income tax in the amounts of \$36.20 and \$153.55 for the years 1974 and 1975, respectively, and from the action of the Franchise Tax Board on the protest of Frank D. O'Neill against a proposed assessment of additional personal income tax and penalties in the total amount of **\$22,536.49** for the year 1977.

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Else O'Neill is named as an appellant because she signed joint personal income tax returns with her husband, Frank D. O'Neill. "Appellant" herein refers to Frank D. O'Neill.

Appellants filed returns for 1974 and 1975 on which they reported capital gains from the sale of a building. Respondent recomputed the taxable gain because the building had not been held for more than five years, and 65 percent of the gain was **includible** rather than 50 percent. (Rev. & Tax. Code, § 18162.5.) Notices of **proposed** assessment were issued for 1974 and 1975, which appellants protested.

Appellant did not file a timely return for 1977, and when he failed to respond to a demand that he file, respondent issued a notice of proposed assessment for 1977. Respondent determined appellant's income from information from the Employment Development Department, returns of appellant's solely owned corporation, and estimates of capital gains, rents and royalties, dividends, and interest based on appellant's income from those items in 1976. Penalties were imposed for 1977 for failure to file, failure to file after notice and demand, negligence, and underpayment of estimated tax.

Appellant has made no argument contesting the validity of respondent's capital gain adjustments for 1974 and 1975, nor has he presented any evidence to dispute respondent's determination of his tax liability for 1977. Instead, appellant argues that only gold and silver coins are legal tender and challenges respondent's and this board's jurisdiction over him. We discussed and rejected similar contentions raised in the Appeals of Fred R. Dauberger, et al., decided March 31, 1982, and see no need to **reconsider** them here. To the extent that **appellant's** arguments, either explicitly or implicitly, would require us to find certain statutes unconstitutional, they are of no avail, since we are prohibited from declaring any statutes unconstitutional by section 3.5 of article III of the California Constitution.

Appellant also asks us to make certain specific findings regarding the word "dollar" and the appropriate medium for payment of taxes. This request is merely an attempt to state appellant's earlier contentions in a different way in order to avoid the application of our holdings in Dauberger, supra, or the prohibition against our **declaring statutes** unconstitutional. Contrary to appellant's assertions, Federal Reserve notes do

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constitute legal tender for the payment of taxes and income for income tax purposes. (31 U.S.C.A. § 5103 (formerly 31 U.S.C. 392); United States v. Wangrud, 533 F.2d 495 (9th Cir.) cert. den., 429 U.S. 818 [50 L.Ed.2d 79] (1976j; United States v. Rifon, 577 F.2d 1111 (8th Cir. 1978); United States v. Benson, 592 F.2d 257 (5th Cir. 1979).) In any case, our sole responsibility is to determine the correct amount of a taxpayer's personal income tax liability, not to engage in esoteric and irrelevant dissertations on the meaning of the word "dollar." Respondent's action, therefore, must be sustained.

We note that appellant raised, and we rejected as meritless, essentially the same arguments in his previous appeal before this board. (Appeal of Frank D. O'Neill, Cal. St. Bd. of Equal., June 29, 1982.) In spite of our previous findings, appellant has continued with this appeal. This can only be construed as an attempt to obstruct and delay the administrative review process. (Appeals of Robert R. Aboltin, Jr., et al., Cal. St. Bd. of Equal., June 29, 1982.) We find, therefore, that appellant has instituted and pursued this appeal merely for the purpose of delay and, pursuant to Revenue and Taxation Code section 19414, a penalty in the amount of \$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 Code., that the action of the Franchise Tax Board on the protest of Frank D. and Else O'Neill against proposed assessments of additional personal income tax in the amounts of \$36.20 and \$153.55 for the years 1974 and 1975, respectively, and on the protest of Frank D. O'Neill against a proposed assessment of additional personal income tax and penalties in the total amount of \$22,536.49 for the year 1977, be and the same is hereby sustained, and that the \$530 delay penalty under section 194.14 be imposed against Frank D. O'Neill, and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, this 13th day Of December, 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 \_\_\_\_\_, Member  
Ernest J. Dronenburg, Jr. \_\_\_\_\_, Member  
Richard Nevins \_\_\_\_\_, Member  
\_\_\_\_\_, Member

**BEFORE** THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
Frank D. and Else O'Neill )

ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition filed January 10, 1984, by Frank D. and Else O'Neill for rehearing of their appeal from the action of the Franchise Tax Board, we are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is hereby ordered that the petition be and the same is hereby denied and that our order of December 13, 1983, be and the same is hereby affirmed.

Done at Sacramento, California, this 31st day of January, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

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

\*For Kenneth Cory, per Government Code section 7.9