

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

In the Matter of the Appeals of)
R. AND **SONJA J. TONBERG**)

Appearances:

For Appellants: Brad **Henschel**

For Respondent: James T. **Philbin**
Supervising 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 R. **Tonsberg** against a proposed assessment of additional personal income tax and penalties in the total amount of **\$3,856.40** for the year 1981, and on the protest of Sonja J. **Tonsberg** against a proposed assessment of additional personal income tax and penalties in the total amount of **\$2,867.50** for the year 1981.

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The sole issue presented for our resolution is whether appellants have demonstrated error in **respondent's** proposed assessments of additional tax and penalties.

Upon receipt of information that appellants were required to file a California income tax return for 1981, respondent notified appellants that it did not have any record of their returns being filed for that year and demanded that appellants file returns. Appellants, husband and wife, thereupon submitted to the Franchise Tax Board for filing a joint California income tax return (form 540) on which they claimed a tax refund. While they did not state their adjusted gross income or tax liability, appellants did supply personal information and reported the **amounts** of their gross income, itemized deductions, and taxes withheld. However, appellants also tampered with the official tax form by making certain additions, deletions, and modifications directly upon it and claimed the altered form to be copyrighted material.

On the first page of the form 540, for example, appellants entered the words **"not items of specific gross income"** next to their reported total income figure. In the space for adjusted gross income, appellants typed the numeral **"0"** and the following language: "None per R & T 17072." On the second page, the sentences pertaining to the alternative use of either the standard deduction or **Schedule A** for itemizing deductions were erased, and in their place, appellants inserted the two words "itemized deductions." Furthermore, even though their adjusted gross income apparently exceeded the sum of their itemized deductions, appellants inserted **"0"** in the space calling for taxable income and added the words **"None per R & T 17073"** adjacent to that number.

Where they were required to state their tax liability, appellants did not enter any information, leaving the space blank. Instead, they added the words **"FTB preparer required to do this"** on the adjacent line. Similar verbiage was inserted in three different places **along the** left margin of the page. In the verification box of the form 540, appellants affixed their signatures and the date on the appropriate lines but obliterated the phrase **"true, correct and complete"** in the perjury declaration above their signatures and replaced it with the words **"our best estimate."** Finally, below their signatures, appellants typed words to the effect that the altered declaration was made involuntarily and under duress and fear.

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After examining the purported return, respondent advised appellants that they had not filed a valid return. Based upon information obtained from the 'California Employment Development Department and appellants' employers, respondent therewith computed each appellant's individual 1981 tax liability and issued the proposed assessments at issue. Respondent also assessed each appellant with a **25-percent** penalty for failure to file a return, a **25-percent** penalty for failure to file a return after notice and demand, and a five-percent penalty for negligent or intentional disregard of the income tax rules and regulations.-; Appellants protested the assessments, and respondent's denial of those protests gave rise to the filing of these appeals. Among their many arguments, appellants contend on appeal that the tax form they submitted is a valid return and that respondent erred in making its assessments.

To qualify as a return, a form 540 must contain sufficient data from which the taxing agency can compute and assess the tax liability of a particular taxpayer. (Appeal of Donald J. Prash, Cal. St. Bd. of Equal., May 8, 1984; Edith G. White, 72 T.C. 1126 (1979); see Charles C. Reiff, 77 T.C. 1169 (1981).) It is well settled that a valid return must state specifically the amounts of gross income and the deductions and credits claimed. (Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977; Appeal of Richard T. Herrington, Cal. St. Bd. of Equal., Nov. 14, 1979; see Rev. & Tax. Code, ' § 18401; Leo Sanders, 21 T.C. 1012 (1954), affd., 225 F.2d 629 (10th Cir. 1955).) The disclosure of such data must be provided in a uniform, complete, and orderly fashion. (Commissioner v. Lane-Wells Co., 321 U.S. 219 [88 L.Ed. 684] (1944).) Yet, a return need not be perfectly accurate or complete so long as it purports to be a return, is sworn to as such, and demonstrates an honest and genuine endeavor to satisfy the requirements of the tax law. (Zellerbach Paper Co. v. Helvering, 293 U.S. 172 (79 L.Ed. 264] (1934); Charles C. Reiff, supra; Robert D. Beard, 82 T.C. 766 (1984).) In any case, a return must be signed by a taxpayer under penalties of perjury. (Edward A. Cyp, 65 T.C. 68 (1975); Vernon A. Ellison, ¶ 76,282 P-H Memo. T.C. (1976).)

Section 18431 of the Revenue and Taxation Code provides, in relevant part:

[A]ny return, declaration, statement or other document required to be made under any provision of this part or regulations shall

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contain, or be verified by, a written declaration that it is made under the penalties of perjury. Such returns, and all other returns, declarations, statements or other documents or copies thereof required by this **part**, shall be in such form as the Franchise Tax Board may from time to time prescribe

A tax return that is not signed under penalties of perjury is not considered a valid return, for without the certification that the entries on the form are correct, the taxing agency cannot determine the accuracy of the taxpayer's self-assessment and is impeded from **adminis-
tering** the tax laws. (Thompson v. Commissioner, 54 **Am.Fed.Tax R.2d** 6319 (1984); see Jensen v. U.S., 53 **Am.Fed.Tax R.2d** 1067 (1984), where the taxpayer refused to sign the return.). The courts have found that a tax document is not signed under penalties of perjury and, thus, 'does not constitute a valid return where the taxpayer has excised the phrase "under penalties of perjury" from the declaration (Edward A. Cupp, supra; Vernon A. Ellison, supra) or marked over or scratched out the verification clause (United States v. Moore, 627 **F.2d** 830 (7th Cir. 1980); Thompson v. Commissioner, supra).

The recent decision of Hewlett v. U.S., 54 **Am.Fed.Tax R.2d** 5546 (1984), proves instructive. In that, case, the taxpayer had similarly deleted the words "true, correct and complete" from the verification clause but substituted a statement arguing that Federal Reserve notes were not money. In sustaining a penalty for filing a frivolous return, the district court held that the taxpayer by altering the declaration had failed to verify his return under penalties of perjury. As a result, the return was found invalid.

In the -instant proceeding, appellants have defaced the perjury clause of the official tax form by inserting the words "our best estimate" in place of the phrase "true, correct and complete.". This **modification** of the verification statement completely vitiates-its purpose; We thus find that appellants did not sign their purported return under penalties of perjury. Therefore, the form 540 submitted by appellants for 1981 was not a valid return.

The law is well settled that respondent's determinations are presumptively correct, and that the taxpayer disputing an assessment has the burden of.

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proving it erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April, 1977; see also Todd v. McColgan, 89 Cal.App.2d 509 (201 P.2d 414] (1949).) This rule of law also applies to the penalties assessed in this matter. (Appeal of Myron E. and Alice 2. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.)

Where a taxpayer files no return or otherwise refuses to cooperate in the ascertainment of his income by failing to file a proper return, the Franchise Tax Board is given great latitude to determine the **amount of** his tax liability, and may use reasonable estimates to establish the taxpayer's income. (Rev. & Tax. Code, § 17561, subd. (b); Joseph F. Giddio, 54 T.C. 1530 (1970); Norman Thomas, ¶ 80,359 P-H Memo. T.C. (1980).) Because appellants **have failed** to present any evidence showing that respondent's determination of their income for 1981 is erroneous or arbitrary, we have no **reason to** disturb the proposed assessments of additional ~~tax~~ **tax**. If appellants are not willing to attest to the accuracy of their tax document, they **cannot expect** respondent to place any reliance on their **self-assessment** in computing their tax.

With respect to the penalty assessments, the penalty for failure to file a timely return (Rev. & Tax. Code, § 18681) and the penalty for failure to file **after** notice and demand (Rev. & Tax. Code, § 18683) must be sustained unless the taxpayer establishes that the failures were due to reasonable cause and not willful neglect. (Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) Appellants have not shown any reasonable basis for their refusal to file a proper return. Appellants' failure to file a proper 1981 return was not, in our opinion, due to reasonable cause. (Appeal of Richard T. Herrington, supra; Appeal of Richard E. Krey, Cal. St. Bd. of Equal., Feb. 3, 1977; cf. George W. Kearse, ¶ 76,370 P-H Memo T.C. (1976).) Appellants have also failed to demonstrate that the deficiency of tax for 1981 was not due to negligence or intentional disregard of the rules and regulations of the California Personal Income Tax Law. (Rev. & Tax. Code, § 18684.) The penalty assessments, therefore, will be sustained.

In an attempt to overturn the proposed assessments of tax and penalties, appellants have submitted copies of printed papers and letters challenging the constitutionality and legality of the monetary and tax

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systems of this state and nation. Specifically, appellants apparently **insist** that they have no taxable income. Clearly, these prepackaged tax protester arguments do not aid appellants' case.

In the first place, this board is precluded by constitutional mandate and long-standing policy from addressing the constitutional arguments. (Appeal of Joan Muncaster, Cal. St. Bd. of Equal., April 5, 1984; Appeal of Liselotte Bump, Cal. St. Bd. of Equal., Feb. 1, 1983.) In the second place, the **generalized objections** raised by these papers concerning the legality of California's system of income taxation have **been found to be meritless and rejected by this board in numerous prior appeals.** (See Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982; Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980; Appeal of William A. Hanks, Cal. St. Bd. of Equal., April 6, 1977.) Accordingly, **respondent's action** in this matter will be sustained.

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ORDER

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 R. **Tonsberg** against a proposed assessment of additional personal income tax and penalties in the total amount of **\$3,856.40** for the year 1981, and on the protest of Sonja **J. Tonsberg** against a proposed assessment of additional personal income tax and penalties in the total amount of **\$2,867.50** for the year 1981, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day
of April , 1985, by the State Board of Equalization,
with Board Members Mr. Dronenburg, Mr. **Collis**, Mr. **Nevins**
and Mr. Harvey present.

Ernest J. Dronenburu. Jr., Chairman
Conway H. Collis, Member
Richard Nevins, Member
Walter Harvey*, Member
_____, Member

*For Kenneth Cory, per Government Code section 7.9