

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WILLIAM A. HANKS)

For Appellant: William A. Hanks, in pro. per.

For Respondent: James W. Hamilton
Acting Chief Counsel

Timothy W. Boyer
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of William A. Banks against a proposed assessment of additional personal income tax **and penalties** in the total amount of \$699.72 for the year 1971.

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Appellant filed a purported 1971 California personal income tax return wherein he reported "total income as expressed in monies of account of the U.S." equal to \$1,785. In essence, appellant determined that because of the alleged illegality of Federal Reserve notes he had not received sufficient lawful money in 1971 to be required to file a return or to have incurred any tax liability for that year.

With **its notification** to appellant that he had not filed a proper return for 1971, respondent demanded that appellant file a properly completed return for that year. Appellant failed to comply with the demand. Thereafter, respondent learned from independent sources that appellant had received a salary of \$12,831 in 1971. On the basis of that information, respondent computed appellant's 1971 tax liability and issued its proposed assessment. Respondent also assessed a 25 percent penalty for appellant's failure to file a proper return, and a 25 percent penalty for his failure to do so upon notice and demand, pursuant to sections 18681 and 18683 of the Revenue and Taxation Code.

Subsequent to the filing of this appeal, appellant submitted additional argument in support of his contention that he is not subject to any California personal income tax liability for the year in question. The major thrust of appellant's additional argument is that the California Personal Income Tax Law is unconstitutional.

The questions and arguments raised by this appeal concerning the legality of Federal Reserve notes **are** substantially similar to those presented in the Appeal of Iris E. Clark, decided by this board on March 8, 1976, and the Appeal of Donald H. Lichtle, decided by this board on October 6, 1976. **On the basis of those** decisions, and for the reasons stated therein, we agree with respondent's determination regarding the taxability of appellant's earnings in 1971.

With respect to appellant's contention regarding the constitutionality of the Personal Income Tax Law, we defer to our well established policy of abstention from **deciding constitutional questions** in appeals involving

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deficiency assessments. (Appeal of Iris E. Clark,
supra.)

Accordingly, **wemust** sustain respondent's action with respect to the proposed assessment.

We must also sustain respondent's action in assessing penalties for appellant's failure to file a return and for his failure to do so upon notice and demand. **In this** connection, we note that the purported return initially filed by appellant contained no information concerning his actual gross income and allowable deductions for 1971. Such a document does not satisfy the filing requirements of the Revenue and Taxation Code and respondent's regulations. (See Rev. & Tax. Code, §§ 18401, 18431; Cal. Admin. Code, tit. 18, regs. 18401-18404(f), 18431-18433(d); see also United States v. Porth, 426 F.2d 519 (10th Cir.), cert. denied, 400 U.S. 824 [27 L. Ed. 2d 531 (1970)]; Appeal of James L. Heisterkamp, Cal. St. Bd. of Equal., Oct. 6 1976.) Moreover, appellant's failure to file a proper 1971 **return** was not, **in our** opinion, due to reasonable cause. (Cf. George W. Kearse, T.C. Memo, Dec. 6, 1976.)

1/ We do note, however, that the power of the state legislature to levy personal income taxes is inherent and requires no special constitutional grant. (Tetreault v. Franchise Tax Board, 255 Cal. App. 2d 277, 280 [63 Cal. Rptr. 322 61 (1967)]; Hetzel v. Franchise Tax Board, 161 Cal. App. 2d 224, 228 [326 P.2d 611] (1958).)

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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 William A. Hanks against a proposed assessment of additional personal income tax and penalties in the total amount of \$699.72 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of April , 1977, by the State Board of Equalization.

Jeffrey B. Smith, Chairman
George J. [unclear], Member
Frank [unclear], Member
Mrs. [unclear], Member
[unclear], Member

ATTEST: W. W. [unclear], Executive Secretary