



78-SBE-089

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

In the Matter of the Appeal of)
RUBEN B. SALAS)

Appearances:

For Appellant: George Hill
Advisor

For Respondent: James C. Stewart
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 Ruben B. **Salas** **against** a proposed assessment of personal income tax and penalty in the total amount of \$513.45 for the year 1974.

Appeal of Ruben B. Salas

Appellant filed a personal income tax Form 540 on or before the due date for **filing** a timely return for **1974**. He provided no information concerning his income and expenses, or any financial data, other than a reference to the receipt of interest income in the amount of \$29.84. On the Form **540**, he entered written objections, on constitutional grounds, to supplying other information relating to his income and expenses. Respondent concluded that appellant's return was not a valid return, in view of the requirements of section 18401 of the Revenue and Taxation Code, because of the failure to provide financial information.

Respondent issued a proposed assessment based upon **employer** information reports concerning appellant's income, and included a 25 percent penalty for failure to file a return.

Appellant's primary contention is that he did not have sufficient income to require the filing of a return because the Federal Reserve notes which he received as income were either valueless or of nominal value. It is appellant's position that Federal Reserve notes do not **qualify** as legal tender under the United States **Constitution**. Moreover, he urges that he properly refused to answer specific questions on the Form 540 because of the constitutional privilege against self-incrimination. He has also directed many additional constitutional challenges to the provisions of the California Personal **Income** Tax Law.

With respect to most of these contentions, we believe the passage of Proposition, 5 by the voters on June 6, 1978, adding section 3.5 to article III of the California Constitution, precludes our determining that the statutory provisions involved are unconstitutional or unenforceable.

Moreover, this board has a well established policy of abstention from deciding constitutional questions in **appeals** involving deficiency assessments. (Appeal of **Myrtle T. Peterson**, Cal. St. Bd. of Equal., April 6, 1978; Appeal of **Iris E. Clark**, Cal. St. Bd. of Equal., March 8, 1976.) This **policy** is based upon the absence of specific **statutory** authority which would allow the Franchise Tax Board to obtain judicial review of an adverse decision in a case of this type, and our belief that such review **should be available** for questions of constitutional importance. (Appeal of **C. Pardee Erdman**, Cal. St. Bd. of Equal., Feb. 18, 1970.)

Appeal of Ruben B. Salas

With respect to the penalty for failure to file a timely return (Rev. & Tax. Code, § 18681), the initial question is whether the tax form appellant filed constituted a proper return. In this connection Revenue and Taxation Code section 18401 provides, in relevant part:

Every individual taxable under this part shall make a return to the Franchise Tax Board, stating specifically the items of his gross income and the deductions and credits allowed by this part, ... (Emphasis added.)

Respondent's regulations specify that the return of a California resident shall be on Form 540 (Cal. Admin. Code, tit. 18, reg. 18401-18404(e)), and they further state that:

Each taxpayer should carefully prepare his return so as fully and clearly to set forth the data therein called for. Imperfect or incorrect returns will not be accepted as meeting the requirements of the law. ... (Cal. Admin. Code, tit. 18, reg. 18401-18404 (f).)

In light of the statute and regulations, it is clear that the Form 540 submitted by appellant did not constitute a valid return. (See United States v. Jordan, 508 F.2d 750 (7th Cir.), cert. den., 423 U.S. 842 [46 L. Ed. 2d 621 (1975)]; United States v. Porth, 426 F.2d 519 (10th Cir.), cert. den., 400 U.S. 824 [27 L. Ed. 2d 53] (1970); Gladwin C. Lamb, ¶73,071 P-H Memo. T.C. (1973).)

Under Revenue and Taxation Code section 18681, the assessment of a penalty for failure to file a timely return must be sustained unless the taxpayer establishes that the failure was due to reasonable cause and not due to willful neglect. (See Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) Appellant has offered no explanation of his failure to file a valid return other than on constitutional grounds. Thus, we must conclude that the penalty was properly imposed.

For the foregoing reasons, respondent's action must be sustained.

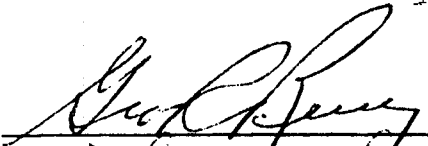
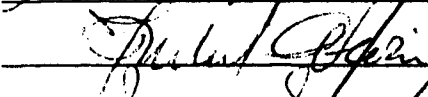
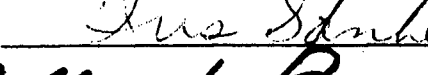

Appeal of Ruben B. Salas

O R D E R

Pursuant **to the** views expressed in the opinion of the board on file in this proceeding, **and good** cause appearins therefor,

IT IS HFRFBY **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 Ruben B. **Salas** against a proposed assessment of personal income tax and penalty in the total amount of \$513.45 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this **27th** day of **September**, 1978, by the State Board of Equalization.

 , Chairman
 , Member
 , Member
 , Member
_____, Member