



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LEON C. HARWOOD)

For Appellant: Leon C. Harwood, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

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 Leon C. Harwood against a proposed assessment of personal income tax and penalty in the total amount of \$628.20 for the year 1974.

Appellant, a California resident, did not **file** a state personal income tax return for the year 1974. Consequently, 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 are either valueless or of nominal value. He urges that these Federal Reserve notes are not dollars but are actually dishonored promises to pay dollars, and that his constitutional rights are violated if these notes are regarded as representing taxable income. He has also directed many additional constitutional **challenges** to provisions of the California Personal Income **Tax Law and to** various federal statutes.

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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 Ruben B. Salas, Cal. St. Bd. of Equal.;; Sept. 27, 1978; 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.)

With respect to the **penalty** for failure to **file** a timely return (Rev. & Tax, Code, § 18681), the **assessment** of this penalty must be sustained unless the taxpayer establishes **that the failure to file was due to reasonable cause and not due to willful neglect.** (See Appeal of Ruben B. Salas, supra; Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) Appellant has offered no explanation of his failure to file a 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.

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 Leon C. Harwood against a proposed assessment of personal income tax and penalty **in the total amount of \$628.20** for the year 1974, be and the same is hereby sustained.

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Done at Sacramento, California, this 5th day
of December, 1978, by the State Board of Equalization.

Chairman
 Member
 Member
_____, Member
_____, Member