



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ARTHUR J. PORTH)

Appearances:

For Appellant: Arthur J. Porth, in pro. per.
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 Arthur J. Porth against proposed assessments of additional personal income tax of \$450.00, including penalties, for the year 1973, and \$527.74 for the year 1974.

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Appellant did not file a personal income tax return for 1973, but submitted a lengthy document to respondent wherein appellant expressed his opinion that Federal Reserve notes are worth only 20 percent of a dollar for tax purposes. In 1975, respondent advised appellant that this document did not constitute a tax return, and demanded that appellant file a return for the year 1973 but appellant refused to do so.

In a search of its records, respondent found appellant's 1974 return showing \$2,967.00 gross income and no tax due. Respondent adjusted appellant's 1974 income and expenses by increasing them five fold. Further, appellant estimated appellant's 1973 income, and issued proposed assessments for both years, including penalties for failure to file and failure to file after notice and demand for the year 1973. This appeal followed the denial of appellant's protest against the proposed assessments.

Appellant's primary contention *is* that he did not have sufficient income to require the filing of a return in 1973 because the Federal Reserve notes which he received as income are either valueless or of nominal value. He applied the same argument to the computation of his 1974 gross income. Moreover, he urges that he properly refused to file a personal income tax return because to do so would violate his constitutional privilege against self-incrimination. He has also directed additional constitutional challenges to provisions of the California Personal Income Tax Law.

With respect to most of these contentions, we believe the adoption 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. Further, this board has a well established policy of abstaining from deciding constitutional questions in appeals involving deficiency assessments. (Appeal of Leon C. Harwood, Cal. St. Bd. of Equal., Dec. 5, 1978; Appeal of Ruben B. Salas, Cal. St. Bd. of Equal., Sept. 27, 1978.) 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 we believe that such review should be available for questions of constitutional importance. (Appeal of C. Pardee Erdman, Cal. St. Bd. of Equal., Feb. 18, 1970.)

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With respect to the penalty for failure to file a timely return (Rev. & Tax. Code, § 18681), and the penalty for failure to file a return upon notice and demand (Rev. & Tax. Code, § 18683), the assessment of these penalties must be sustained unless the taxpayer establishes that the failure to file was due to reasonable cause and not due to willful neglect. (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 penalties were properly imposed.

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


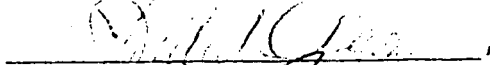
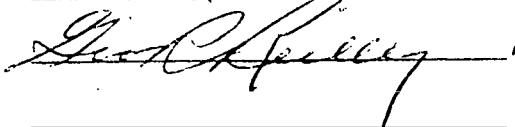
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O R D E R

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 Arthur J. Porth against proposed assessments of additional personal income tax of \$450.00, including penalties, for the year 1973, and \$527.74 for the year 1974, be and the same is hereby sustained.,

Done at Sacramento, California, this 9th day of January, 1979 , by the State Board of Equalization.

 Chairman
 , Member
 , Member
_____, Member
_____, Member