



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
AUSTIN C. AND LOUELLA WIKOFF)

Appearances:

For Appellants: Mr. Arthur J. Porth

For Respondent: John Akin
Counsel

OPINION

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 Austin C. and **Louella Wikoff** against proposed assessments of additional personal income tax and penalties in the total amounts of \$558.07, \$92.23, and \$466.42, for the years 1972, 1973, and 1974, respectively.

Appeal of Austin C. and Louella Wikoff

Appellants filed their 1973 and 1974 returns in October 1975. The record does not disclose when their 1972 return was filed but the returns for all three years were audited at the same time. Each return had been prepared by Mr. A. J. Porth and had reported only **one-fourth** of appellants' income calculated under Mr. Porth's theory that Federal Reserve notes are worth only one-fourth of their face value in silver.

Respondent requested information from appellants concerning income and expenses but appellants did not respond. Therefore, respondent reconstructed appellants' income based on the face value of Federal Reserve notes, applied the standard deduction and issued the assessments in question. Respondent also imposed penalties for failure to file timely returns and failure to provide requested information. Appellants' protests against these actions were denied and this timely appeal followed.

Appellants have directed several constitutional challenges to provisions of the California Personal Income Tax Law. In addition to their arguments that Federal Reserve notes are of nominal value, appellants contend that filing personal income tax returns violates their Fifth Amendment privilege against self-incrimination. At the oral hearing in this matter, appellants revised their argument, claiming a right to revoke personal income tax returns they filed in the past. As authority for this action, appellants referred to recent federal court decisions upholding a taxpayer's right, in some circumstances, to revoke his consent to examination^{1/} and copying of his records by the Internal Revenue Service.^{2/}

We have considered appellants' arguments and conclude that we must follow the reasoning and result set forth in many similar appeals to this board, including the recent appeal of appellants' representative, Mr. Arthur J. Porth. In that appeal, decided January 9, 1979, we stated:

With respect to most of these **conten-**
tions, we believe the adoption of Proposition 5
by the voters on June 6, 1978, adding

^{1/} Those cases are distinguishable here because they involved criminal charges against taxpayers; further, they raised constitutional issues which can not be decided by this board for the reasons stated in this opinion.

Appeal of Austin C. and Louella Wikoff

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 **abstain-**ing from deciding constitutional questions in appeals involving deficiency assessments, [Citations.] 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 such review should be available for questions of constitutional importance. [Citation.]

For the foregoing reasons, respondent's action in this matter must be upheld,

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 Austin C. and **Louella** Wikoff against proposed assessments of additional personal income tax and penalties in the total amounts of \$558.07, \$92.23, and \$466.42, for the years 1972, 1973, and 1974, respectively, be and the same is hereby sustained.

August Done at **Sacramento**, California, this 16th day of , 1979, by the State Board of Equalization.

William E. Barnes, Chairman
Ernest M. Rosenberg, Member
Robert E. ..., Member
George Kelly, Member
_____, Member