

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
JACK DEN BLEYKER )

For Appellant: Jack Den Bleyker, in pro. per.

For Respondent: Bruce W. Walker  
Chief Counsel

Claudia K. Land  
Counsel

O P I N I O N

This appeal is made pursuant to section 18646 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the petition of Jack Den Bleyker for redetermination of a jeopardy assessment of personal income tax of **\$1,872.00** for the period January 1, 1976 through October 14, 1976.

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On two occasions in 1976, August 18 and October 14, appellant was arrested and charged with possession of illegal drugs for sale. At the time **of** the August 18 arrest appellant was in possession of one ounce of cocaine which he admitted he was going to sell **for \$2,200.00**. Appellant also admitted that his source for cocaine had also been providing him with marijuana **for** about six months. The charge resulting from the August 18 arrest was dismissed on March 29, 1977, with the granting of appellant's motion to suppress illegally seized evidence.

The October 14, 1976 arrest was; based on information received on that date from a confidential informant that appellant was selling various drugs. The informant stated that he had witnessed appellant **selling** and using drugs with local high school students and others on approximately twenty occasions over the past four months. In addition, the **informant** stated he had observed large quantities **of drugs**, some packaged for street sale, while visiting appellant on October 2 and October 12. On October 2 the informant also saw several items of sound equipment reportedly **stolen** by a third party and traded to appellant for drugs.

The police arranged for the informant to make a controlled buy of one ounce of marijuana on October 14. The informant paid appellant \$10.00 for one ounce and **discussed buying a kilo of marijuana from appellant** later for **\$175.00**. Later that afternoon, pursuant to a warrant, police searched the home where appellant resided and seized various illegal drugs as well as **\$1,601.00** in cash from appellant's wallet. Most **of** the drugs **were** found in appellant's bedroom and he admitted they were his. The police report listed the drugs seized as follows: 15,000 amphetamine tablets, 9 pounds of marijuana, 8 grams of cocaine, 13 grams of **PCP**, 9 Thai sticks and one mililiter of hashish oil. Many of the drugs were packaged in small quantities for street sale and the street value of these substances was estimated at **\$2,700.00** by respondent and over **\$3,000.00** by the police. Appellant was charged with several counts of possession of drugs for sale and pled guilty to **possession** of cocaine for sale, while the disposition of the remaining counts was continued until sentencing. Appellant served nine months in Los Angeles County Jail and was released on five years' probation.

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Respondent issued the jeopardy assessment in question **on October 15, 1976**, the day after appellant's arrest. On the basis of the value of drugs found in appellant's possession on the two occasions when he was arrested, respondent concluded that appellant was earning **\$1,500.00** a week selling drugs. This figure was multiplied by 28 weeks, the period of time that appellant had admitted being involved in drug dealing. The total, **\$42,000.00**, was the original projection of appellant's income for the jeopardy period. This figure was reduced 40 percent, on appellant's petition for reassessment, for the cost of goods sold. The revised income projection, on which the assessment of **\$1,872.00** was based, was **\$25,000.00**. Respondent made no further revisions of its projection and this appeal followed. The principal issue is whether respondent's reconstruction of appellant's income, as modified, was reasonable.

Respondent's authority to reconstruct a taxpayer's income is found in Revenue and Taxation Code section 17561, subdivision (b), and its corresponding regulation:

If the taxpayer does not regularly employ a method of accounting which clearly reflects his income, the computation of taxable income shall be made in a manner which, in the opinion of the Franchise Tax Board, does clearly reflect income. (Cal. Admin. Code, tit. 18, reg. 17561, s'ubd. (b)(1).)

A reasonable reconstruction is presumed correct, but the presumption is rebutted if the reconstruction is shown to be arbitrary and excessive or based on assumptions which are not supported by the evidence. (Shades Ridge Holding Co., Inc., ¶ 64,275 P-H Memo. T.C. (1964), affd. sub nom. Fiorella v. Commissioner, 361 F.2d 326 (5th Cir. 1966); Appeal of David Leon Rose, Cal. St. Bd. of Equal., March 8, 1976.) In other words, there must be credible evidence in the record which, if accepted as true, would induce a reasonable belief that the amount of tax assessed against the taxpayer is due and owing. (Appeal of James Godfrey Gallardo, Cal. St. Bd. of Equal., Sept. 28, 1977; Appeal of Burr McFarland Lyons, Cal. St. Bd. of Equal., Dec. 15, 1976.)

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Appellant does not deny that he derived income from drug sales. He does however, dispute, **respondent's** calculations. **As** noted earlier herein, **those** figures were based on extensive police and probation reports, including appellant's own statements **concerning** the duration of his **illegal** activity and the amount of income he earned. We believe that official police reports are reliable **evidence** admissible on appeal pursuant to California Administrative Code, title 18, section 5035, subdivision (c) and we have previously **held** that statements made by a taxpayer upon arrest are sufficient to support respondent's calculations. (Appeal of Burr McFarland Lyons, supra.) We therefore reject appellant's attempt on appeal to selectively contradict, his earlier admissions.

Finally, even **assuming** arguendo that the **police** reports were inaccurate, appellant has presented no evidence from which a different assessment may be calculated. Although he did file a 1976 return, he did not report any income from drug sales. Furthermore, appellant has offered no credible explanation for his possession of **\$1,601.00** in cash and nearly **\$3,000.00** worth of drugs in a year when he allegedly earned less than \$700.00. We find it impossible to believe that appellant could have amassed any cash savings from such earnings. The little information appellant provided concerning his living **expenses shows this to be impossible.**

The record as a whole demonstrates quite clearly that appellant **has failed to prove** any error in respondent's reconstruction. General allegations are insufficient to carry appellant's burden.' (See Appeal of Marcel C. Robles, Cal. St. Bd. of Equal., June 2.8, 1979.) Therefore, the assessment, as modified to exclude the cost of goods sold, must be sustained.


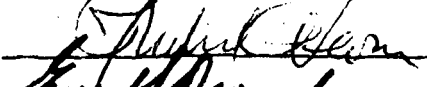



**O R D E R**

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

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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 in denying the petition of Jack Den Bleyker for redetermination of a jeopardy assessment of personal income tax of \$1,872.00 for the period January 1, 1976 through October 14, 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of November, 1979, by the State Board of Equalization.

 Chairman  
 Member  
 Member  
 Member  
 Member