

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RICHARD T. HERRINGTON)

For Appellant: Richard T. Herrington, 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 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Richard T. Herrington against a proposed assessment of additional personal income tax, including a penalty, in the amount of \$4,503.08 for the year 1976. Subsequent to the filing of this appeal, respondent conceded that, after adjusting the

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basic deficiency and the amount of the penalty to account for the California income taxes withheld from appellant's wages, the actual sum in controversy is \$2,526.52.

Appellant, a resident of California; filed a timely signed personal income tax return Form 540 for 1976 which contained no entries regarding his income or allowable deductions. In lieu of appropriate figures, appellant either entered the word "none" or indicated that he objected to providing the requested information on various constitutional grounds. A W -2 Statement attached to the form disclosed that appellant had received wages of almost \$45,000, and that nearly \$1,900 had been withheld by 'his employer for state income taxes. Appellant requested a refund of all of his withholding.

After reviewing appellant's Form 540, respondent used the information in it to compute a proposed assessment of additional tax of \$3,915.73 and a penalty of \$587.34 for failure to file a timely, valid return. Appellant's protest against this assessment was denied, giving rise to this appeal.

It is settled that a deficiency assessment is presumed to be correct, and that the taxpayer bears the burden of proving that it is erroneous. (Todd.v. McCoigan, 89 Cal. App. 2d 509 [201 P. 2d 414] (1949); Appeal of Parl R. Blattenberger, Cal. St. Bd. of Equal. , March 27, 1952.) In this case, respondent had ample evidence, in the form of appellant's W -2, on which to base its assessment. Since appellant has failed to offer any evidence to show that his true net income was less than that calculated by respondent, we must conclude that he has not established any error in respondent's determination.

Turning to the penalty for failure to file a timely return, we note again that the Form 540 appellant filed contained no entries regarding his income or deductions. As we explained at considerable length in the Appeal of Arthur W. Keech, decided July 26, 1977, a Form 540 which does not contain such information is not a valid return under the applicable provisions of the Personal Income Tax Law and the regulations. (See Rev. & Tax. Code, § 18401; Cal. Admin. Code, tit. 1.8, reg. 18401-18404(f).) Thus, although appellant filed a timely Form 540, he did not file a timely "return. "

Under Revenue and Taxation Code section 18681, a penalty for failure to file a timely return must be sustained unless the taxpayer establishes that his failure was due to reasonable cause and not due to willful neglect. (Appeal of Arthur W. Keech, supra.) No such showing has been made here. Although appellant alleges that he had a constitutional

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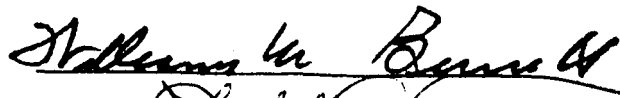

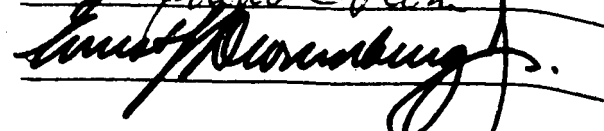
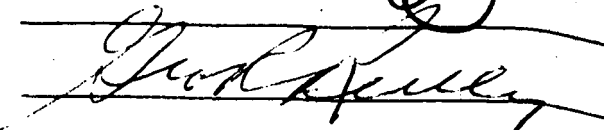

right not to answer the questions on the return, we held in Keech that similar generalized objections to filing a proper return are entirely frivolous and do not constitute reasonable cause for failure to file. The penalty, therefore, was properly imposed.

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 Richard T. Herrington' against a proposed assessment of additional personal income tax, including a penalty, in the amount of \$4,503.08 for the year 1976, be and the same is hereby modified in accordance with respondent's concession. In all other respects, the action of the Franchise Tax Board is sustained.

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

 , Chairman
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