2002-SBE-001

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	Case No. 47679
LaVonne A. Hodgson	)	
	)	

Representing the Parties:

For Appellant:	LaVonne A. Hodgson
For Respondent:	Mark McEvilly, Tax Counsel
Counsel for Board of Equalization:	Donald L. Fillman, Tax Counsel Ian C. Foster, Tax Counsel

OPINION ON PETITION FOR REHEARING

Our decision of February 15, 2001, sustained the action of respondent Franchise Tax Board as to the assessment of tax and interest. It reversed the action of respondent in imposing penalties pursuant to Revenue and Taxation Code (R&TC) sections 19131 (for late filing) and 19133 (for failure to file upon notice and demand). Pursuant to R&TC section 19048, both appellant and respondent filed timely petitions for rehearing. As discussed below, we denied appellant's petition and granted respondent's petition on July 10, 2001. Respondent's contentions in that petition are the subject of the present opinion.

Introduction

The only year in issue is 1994. The Board's decision of February 15, 2001, primarily addressed two issues. First, whether the income reported on a Form W-2—issued by Northrup Grumman (appellant's employer)—could properly be used by respondent in determining the amount of a proposed assessment. The decision concluded that the Form W-2 income could be so used (and rejected appellant's related contentions: that appellant is not subject to California tax law and that he was denied due process). Second, the decision considered whether appellant had filed a valid return when he timely filed a Form 540 that contained "zeros" where it asked for federal adjusted gross income, taxable income, and total tax (a "zero return"), yet showed taxes withheld and requested a refund. The decision concluded that the return was valid. Therefore, the two penalties that respondent imposed (for late filing, under R&TC section 19131, and for failure to file after notice and demand, under R&TC section 19133) were abated. A new argument was made for the first time on rehearing. Appellant appears to now contend that the fact that he attached a copy of a Form W-2 to his zero return, should allow his return to be considered valid. (Appellant's previous argument was that the Form W-2 should not be used in determining his tax liability.)

Appellant's Petition for Rehearing

In appellant's petition for rehearing, he primarily restated his previous contentions. He also contended that the Board itself did not act on his appeal or sign the decision. In fact, the Board did act on appellant's appeal when it met on February 15, 2001, and adopted the summary decision. There is no requirement that a summary decision that has been duly adopted by the Board must also include the signatures of any or all of the Board's members. We concluded that the grounds set forth by appellant in his petition for rehearing did not constitute good cause for a new hearing, as required by the *Appeal of Wilson Development, Inc.* (94-SBE-007), decided by this Board on October 5, 1994. Therefore, appellant's petition for rehearing was denied on July 10, 2001.

Respondent's Petition for Rehearing

Respondent's petition for rehearing contends that the portion of our summary decision that abated the penalties was based on an error of law. It contends that the return form filed by appellant for 1994 was invalid because it contained only zeros where it requested amounts of adjusted gross income, taxable income, and total tax.[1] Respondent contends that the return did "not contain any information relating to the taxpayer's income from which a tax can be computed . . . ." (Citing *United States v. Porth* (10th Cir. 1970) 426 F.2d 519.) Furthermore,

[1] We note that there are other reasons why a return form may be considered invalid, including the alteration of the statement that the form is signed under penalty of perjury.

there was no honest and reasonable intent to provide information required by the tax law. Thus, appellant's return was invalid and the penalties imposed should not have been abated.[2] On July 10, 2001, we withdrew our order of February 15, 2001, with regard to the penalties, and granted respondent's petition for a rehearing on that issue. Time was allowed for further briefing on the "zero return"/penalties issue.

We note that there is a split of authority between the United States Court of Appeals for the Ninth Circuit and the United States Court of Appeals for several other circuits. The Ninth Circuit appears to be the sole circuit that has held that a return with all zeros is a valid return—at least for the purpose of Internal Revenue Code (IRC) section 7203 (criminal misdemeanor willful failure to file). The United States Supreme Court has not yet resolved the disagreement among the circuits as to zero federal returns. This Board has held that a California return containing only zeros was not a valid return. (See *Appeal of Richard E. Krey*, Cal. St. Bd. of Equal., Feb. 3, 1977.) However, we have not addressed this specific issue in a formal opinion after the Ninth Circuit's decisions in *United States v. Long* (9th Cir. 1980) 618 F.2d 74 (*Long*), and *United States v. Kimball* (9th Cir. 1991) 925 F.2d 356 (*Kimball*). Each of these cases held that federal tax returns, which contained only zeros on the lines requesting dollar amounts, were valid returns for purposes of criminal sanctions (assuming that other legal requirements were met, e.g., that the return was properly executed under penalty of perjury). Since California is located in the Ninth Circuit, we believe the issue should again be addressed.[3]

Respondent's Contentions

Respondent contends that the Board erred in the present case when it followed the Ninth Circuit's decision in *Long*. Respondent gives three reasons: (a) there is no reason or precedent for applying *Long's* holding beyond the particular facts of that case; (b) there are other proper tests to apply; and (c) our decision in the instant appeal is contrary to prior Board precedent. FTB's arguments are expanded as follows:

(a) *Long* cannot be applied beyond its particular facts because:

- *Long* dealt with an IRC section 7203 (criminal misdemeanor willful failure to file) conviction, and did not address "reasonable cause" to abate civil penalties for failure to file.

- The reasoning in *Long* cannot be applied beyond IRC section 7203. (Respondent (incorrectly) implies that in *Kimball*, the Ninth Circuit overruled *Long*.)

[2] We note that respondent's notice and demand letter specifically rejected appellant's zero return and requested a valid return for 1994.

[3] Although California is located in the federal Ninth Circuit, and Ninth Circuit cases (concerning federal tax law) are often helpful, they do not bind this Board in applying California tax law.

- Five other federal circuits have rejected *Long's* reasoning.

(b) The proper tests to apply are from the following cases:

- *United States v. Porth, supra* (*Porth*), holding that a return "which does not contain any information relating to the taxpayer's income from which a tax can be computed is not a return within the meaning of the Internal Revenue Code";

- *Zellerbach Paper Co. v. Helvering* (1934) 293 U.S. 172, 180, which stated that an "honest and genuine endeavor to satisfy the law" is necessary for a valid return; and

- *Florsheim Brothers Drygoods Co., Ltd. v. United States* (1930) 280 U.S. 453, 462, which stated that a purported return "must honestly and reasonably be intended" "to be a specific statement of the items of income, deductions, and credits."[4]

(c) The Board's decision in the instant appeal is contrary to prior Board precedent, including the *Appeals of R. and Sonja J. Tonsberg*, decided by the Board on April 9, 1985, and the *Appeal of Richard E. Krey*, decided on February 3, 1977.

Applicable Law

R&TC section 18501, subdivision (a), provides in pertinent part as follows:

"Every individual taxable under Part 10 (commencing with section 17001) shall make a return to the Franchise Tax Board, stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable . . . ."

[4] *Zellerbach* and *Florsheim* were not quoted by respondent. Rather, they were cited in footnotes for the proposition that "there must also be an honest and reasonable intent to supply the information required by the tax code." (Resp. Pet. for Reh., p. 2, fn. 3.) But both of these cases dealt with whether the statute of limitations should begin to run upon the initial filing of the return in question. In *Zellerbach*, a correct return was filed that met the requirements of the then existing law. Thereafter, the law was retroactively changed to require a second return. The court held that the statute of limitations was not tolled because of the change in the law because the initial return purported to be a return, was sworn to as such, "and evinces an honest and genuine endeavor to satisfy the law. This is so though at the time of filing the omissions or inaccuracies are such as to make amendment necessary. Even more clearly is it so when the return is full and accurate in the beginning . . . ." In *Florsheim*, an entirely different return form was used (Form 1031T) than the one required (Form 1120). The court concluded that although a [correct form but] defective or incomplete return may be sufficient to start the statute of limitations running—because it purports to be a specific statement of the items of income, deductions and credits, and honestly and reasonably is intended to do so—"[t]here is not a pretense of such purpose with respect to Form 1031T." (Form 1031T was a combined estimate of taxes and request for extension of time to file the return.)

(Emphasis added.)[5]

Respondent correctly notes that the Tenth Circuit test from *Porth* has been adopted by most other courts.[6] We are not aware of any circuit that has not adopted the *Porth* test. (It was adopted by the Ninth Circuit in *United States v. Klee* (9th Cir. 1974) 494 F.2d 394.) *Porth* stated that a return must contain information relating to the taxpayer's income from which the tax can be computed. The disagreement between the courts, at least as to criminal sanctions, concerns where to draw the line between a return that provides this information and a return that does not. Since the Ninth Circuit appears to be alone in finding that a zero return is valid (for purposes of criminal sanctions, and, at least, when only zeros are used), an analysis of the two camps is instructive.

Holdings of the Ninth Circuit. The Ninth Circuit first applied the *Porth* test to a return with only zeros in *Long* (concerning the criminal sanctions of IRC section 7203). The court distinguished the facts in *Porth* (no financial entries) from those in *Long* (only zeros), and held that the zero return was valid. The court stated:

> "The zeros entered on Long's tax forms constitute 'information relating to the taxpayer's income from which the tax can be computed.' The IRS could calculate assessments from Long's string of zeros, just as it could if Long had entered other numbers. The resulting assessments might not reflect Long's actual tax liability, but some computation was possible."

(*United States v. Long, supra,* 618 F.2d at pp. 75-76, quoting *United States v. Klee, supra*, 494 F.2d at p. 397.) The *Long* court then addressed the difference between a zero return and a blank return:

> "Nothing can be calculated from a blank, but a zero, like other figures, has significance. A return containing false or misleading figures is still a return. False figures convey false information, but they convey information."

(*Id.*) In February 1991, an en banc panel of the Ninth Circuit (again concerning the criminal sanctions of IRC section 7203) rejected the validity of a return filled with asterisks—because an asterisk, unlike a zero, has no numerical or financial significance. Nevertheless, the court reaffirmed *Long's* analysis as to returns filled with zeros:

> "*Long's* distinction is admittedly formalistic. It may be that whether a form contains zeros, asterisks, or nothing at all, it makes essentially the

---

[5] We note that California's return requirement in R&TC section 18501 is more specific than the requirement in IRC section 6012 (a).

[6] The *Porth* case concerned a return that did not contain even zeros. The return contained only the taxpayer's name and various references to the Constitution.

> same point: the taxpayer refuses to report income. We nevertheless reaffirm Long's analysis. A line must be drawn somewhere, and given the need for clear law on an arcane point, it should be as bright as possible. *Long* accomplishes that, consistent with *Klee*."

(*United States v. Kimball, supra,* 925 F.2d at p. 358; emphasis added.) Both *Long* and *Kimball* concerned criminal sanctions. But Ninth Circuit cases applying civil sanctions can be distinguished from the *Long* approach. Included are *Fuller v. United States* (9th Cir. 1986) 786 F.2d 1437 (*Fuller*) (concerning the frivolous return penalty of IRC section 6702) and *United States v. Hatton* (9th Cir. 2000) 220 F.3d 1057 (*Hatton*) (concerning a civil bankruptcy issue)—both of which were decided after *Long*. *Fuller*, at page 1439, held as follows:

> "We believe, however, that Congress' use of the word 'self-assessment' lends itself to a broader interpretation: one which encompasses more than numerical responses to questions concerning taxes owed, and which includes these individuals' refusals to furnish answers to such questions. This is because such a refusal amounts to an assertion that the individual is assessing no amount of taxes against himself on his return. It is a return which shows no tax liability and no recognizable basis for reaching such a conclusion. It is the functional and legal equivalent of a self-assessment of 'zero.' Such a return 'does not contain information on which the substantial correctness of the self-assessment may be judged' within the meaning of section 6702."

(Emphasis added.) *Hatton*, decided well after both *Long* and *Kimball*, confirmed the Ninth Circuit's definition of "return" with the following, from pages 1060 and 1061:

> "Although the I.R.C. does not provide a statutory definition of 'return,' the Tax Court developed a widely-accepted interpretation of that term in *Beard v. Commissioner*, 82 T.C. 766 (1984), *aff'd*, 793 F.2d 139 (6th Cir. 1986). In order for a document to qualify as a return: '(1) it must purport to be a return; (2) it must be executed under penalty of perjury; (3) it must contain sufficient data to allow calculation of tax; and (4) it must represent an honest and reasonable attempt to satisfy the requirements of the tax law.' *Hindenlang*, 164 F.3d at 1033 (citing definition of 'return' in *Beard*); *Beard*, 82 T.C. at 767. The *Beard* definition was derived from two Supreme Court cases, *Germantown Trust Co. v. Commissioner*, 309 U.S. 304, 84 L. Ed. 770, 60 S. Ct. 566 (1940) and *Zellerbach Paper Co. v. Helvering*, 293 U.S. 172, 79 L. Ed. 264, 55 S. Ct. 127 (1934), and provides a sound approach under both the Bankruptcy Code and the I.R.C. Furthermore, the *Beard* definition is consistent with the purpose of a return, which is not only to get tax information in some form, but 'to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished.'

> *Commissioner v. Lane-Wells Co.*, 321 U.S. 219, 223, 88 L. Ed. 684, 64 S. Ct. 511 (1944)."

(Emphasis added.) We note that the last case cited in this quotation—*Commissioner v. Lane-Wells Co*.—was a United States Supreme Court reversal of a Ninth Circuit decision. The Supreme Court sustained the civil sanctions imposed by the IRS. The corporation tax return in question contained enough financial information to also compute the personal holding company tax, but this did not meet the separate IRS filing requirements to report personal holding company income. The Supreme Court held:

> "It is contended by the Government that the returns in the present case were insufficient to advise the Commissioner that any liability existed for the holding-company tax. The Board of Tax Appeals found that the returns filed by the corporation disclosed its gross income and deductions and its resulting net income. 43 B. T. A. 470, 471. The [Ninth] Circuit Court of Appeals construed this as finding that they 'showed all the facts necessary for the respondent to compute the taxes as a personal holding company obligation.' 134 F.2d at 978 . . . .
>
> "Congress has given discretion to the Commissioner to prescribe by regulation forms of returns and has made it the duty of the taxpayer to comply. It thus implements the system of self-assessment which is so largely the basis of our American scheme of income taxation. The purpose is not alone to get tax information in some form but also to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished."

(*Commissioner v. Lane-Wells Co*. (1944) 321 U.S. 219, 223.)

In *Hess v. United States* (E.D. Wash. 1991) 785 F.Supp. 137, a federal tax case decided in December 1991 (ten months after *Kimball*), the federal District Court for the Eastern District of Washington (within the Ninth Circuit) considered a return filled partially with zeros—where it requested income information. The return also contained actual amounts for taxes withheld—for which the taxpayer sought a refund. Although the court indicated that it was bound by *Long*, it concluded that the inclusion of actual amounts for taxes withheld (in a return that otherwise used zeros) was materially different from a return containing only zeros. The court stated that the only logical conclusion was that there was a source of taxable income that the return omitted. Thus, the face of the return showed that it contained insufficient "information from which tax liability could be calculated."[7] The court concluded that it was not a valid return—even under the *Long* approach.

[7] We note that appellant's return in the present case also includes zeroes where income information was requested but actual amounts for California taxes withheld—for which appellant seeks a refund (in the amount of $2,928).

Holdings in Other Circuits. Respondent correctly points out that at least three other federal circuits have specifically disapproved of the Ninth Circuit's *Long* analysis (for both civil and criminal sanctions).[8] Two of these cases, concerning returns that contained only zeros on the lines that requested dollar amounts, are *United States v. Rickman* (10th Cir. 1980) 638 F.2d 182 (*Rickman*); and *United States v. Mosel* (6th Cir. 1984) 738 F.2d 157 (*Mosel*). In *Rickman*, the Tenth Circuit held, at page 184:

> "In *Florsheim Bros. Co. v. United States*, 280 U.S. 453, 462, 50 S. Ct. 215, 218, 74 L. Ed. 542 [1930] the Court referred to a corporate return purporting to show income, deductions, and credits and said that the return 'must honestly and reasonably be intended as such.' Defendant's 1975 return did not reflect his income. [Persons] cannot escape the criminal penalty for failure to file by such blatantly devious means. The request for refund of tax withheld shows that he received income and he made no disclosures from which a tax might be determined. To the extent that this decision is inconsistent with *United States v. Long*, 9 Cir., 618 F.2d 74, we respectfully disagree with that decision."

The defendant in *Mosel* filed a zero return and cited *Long* in his defense. However, he was convicted in the trial court under IRC section 7203. On appeal, the *Mosel* court upheld his conviction, stating at pages 158–159:

> "Mosel's principal argument concerns the submission of the Form 1040 for the year 1980. He claims that because he did in fact file an income tax return for that year and because he filled in the blanks of that form with zeroes as above indicated, he cannot, as a matter of law, be found guilty of failing to file a return in violation of 26 U.S.C. § 7203. Mosel asserts that under *United States v. Long*, 618 F.2d 74 (9th Cir. 1980), his 1980 return was a valid return, even if erroneous, because a tax could be computed from the information contained on the form. He therefore argues that, although the information might be false and its submission a crime under 26 U.S.C. § 7206, a felony, it cannot be a crime under section 7203, a misdemeanor.
>
> "Upon consideration, we reject the position of the Ninth Circuit and hold instead that the Form 1040 submitted was properly construed as no return because of its failure to include any information upon which tax could be calculated. Accordingly, we align ourselves with those circuits which have specifically considered and rejected the Ninth Circuit's decision in *Long*. *United States v. Rickman*, 638 F.2d 182 (10th Cir. 1980); *United States v. Moore*, 627 F.2d 830 (7th Cir. 1980) *cert. denied*, 450 U.S. 916,

[8] Respondent contends five other circuits reject *Long*. However, factual distinctions in some of the cases from other circuits call into question whether the *Long* holding is rejected, or merely not followed under the facts before the court.

> 67 L. Ed. 2d 342, 101 S. Ct. 1360 (1981); *see also United States v. Smith*, 618 F.2d 280 (5th Cir.), *cert. denied*, 449 U.S. 868, 101 S. Ct. 203, 66 L. Ed. 2d 87 (1980); *United States v. Grabinski*, 558 F. Supp. 1324 (D. Minn. 1983). We particularly agree with the Seventh Circuit's observation in *United States v. Moore* that
>
> > '. . . It is not enough for a form to contain some income information; there must also be an honest and reasonable intent to supply the information required by the tax code. . . . In our self-reporting tax system the government should not be forced to accept as a return a document which plainly is not intended to give the required information.'
>
> "627 F.2d at 835.
>
> "Although Mosel's argument has some surface appeal in that the symbol zero has mathematical meaning, we conclude that no reasonable person employing such a symbol in these circumstances could understand that he had submitted the information which is required in a tax return. Mosel's 1980 Form 1040 might reasonably be considered a protest, but under no circumstances can it be rationally construed as a return."

(Emphasis added.) The *Mosel* court applied the other test that respondent urges us to consider—the "honest and reasonable intent" test. So, also, did the court in *United States v. Moore* (7th Cir. 1980) 627 F.2d 830, cert. den. 450 U.S. 916, where it stated at page 835:

> "The mere fact that a tax could be calculated from information on a form, however, should not be determinative of whether the form is a return. Porth relied in part on earlier Supreme Court cases which considered the definition of a return in another context. These cases indicate that it is not enough for a form to contain some income information; there must also be an honest and reasonable intent to supply the information required by the tax code. See *Germantown Trust Co*. (1940) 309 U.S. 304, 308-09, 60 S.Ct. 566, 568, 84 L.Ed. 770; *Florsheim Brothers Co. v. United States* (1930) 280 U.S. 453, 462, 50 S.Ct. 215, 74 L.Ed. 542. In *Zellerbach Paper Co. v. Commissioner* (1934) 293 U.S. 172, 180, 55 S.Ct. 127, 131, 79 L.Ed. 264, it was said that:
>
> > 'Perfect accuracy or completeness is not necessary to rescue a return from nullity, if it purports to be a return, is sworn to as such, and evinces an honest and genuine endeavor to satisfy the law. [Citation omitted.]'
>
> "In [these types of] cases, it is obvious that there is no "honest and

> genuine" attempt to meet the requirements of the code. In our self-reporting tax system the government should not be forced to accept as a return a document which plainly is not intended to give the required information."

(Emphasis added.)

Distinct Nature of Criminal Tax Statutes. Although the present case concerns only civil sanctions, it is helpful to briefly review the distinction between criminal tax sanctions and other sanctions. The United States Supreme Court has acknowledged the clear distinction between the application of certain criminal tax statutes (in which Congress imposes the element of "specific intent") and the application of other criminal (and civil) statutes. In *Cheek v. United States* (1991) 498 U.S. 192, 199–200 (*Cheek*), the court stated as follows:

> "The general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system. [Citations omitted.] . . . [T]he common law presumed that every person knew the law. This common-law rule has been applied by the Court in numerous cases construing criminal statutes. [Citations omitted.]
>
> ". . . Congress has . . . softened the impact of the common-law presumption by making specific intent to violate the law an element of certain federal criminal tax offenses. Thus, the Court almost 60 years ago interpreted the statutory term 'willfully' as used in the federal criminal tax statutes as carving out an exception to the traditional rule."

This special exception to the rule (that ignorance of the law is no defense) applies only to certain criminal tax statutes.[9] It does not apply to other criminal statutes or to civil statutes unless they include such an exception. Thus, the exception does not apply in the present case. Appellant's ignorance or misunderstanding of California's tax laws will not excuse him or protect him from applicable civil sanctions.

Board Precedent. In the *Appeal of Richard E. Krey*, *supra*, the Board held that a zero return did not satisfy the filing requirement. In the *Appeals of R. and Sonja J. Tonsberg, supra* (concerning a return with an altered jurat), the Board stated as follows:

---

[9] The dissent in *Cheek*, at pages 209 and 210, noted as follows: ". . . it is incomprehensible to me how, in this day, more than 70 years after the institution of our present federal income tax system with the passage of the Income Tax Act of 1913 [citation omitted] any taxpayer of competent mentality can assert as his defense to charges of statutory willfulness the proposition that the wage he receives for his labor is not income, irrespective of a cult that says otherwise and advises the gullible to resist income tax collections. One might note in passing that this particular taxpayer, after all, was a licensed pilot for one of our major commercial airlines; he presumably was a person of at least minimum intellectual competence."

> "To qualify as a return, a form 540 must contain sufficient data from which the taxing agency can compute and assess the tax liability of a particular taxpayer. . . . [A] valid return must state specifically the amounts of gross income and the deductions and credits claimed. . . . The disclosure of such data must be provided in a uniform, complete, and orderly fashion. . . . Yet, a return need not be perfectly accurate or complete so long as it purports to be a return, is sworn to as such, and demonstrates an honest and genuine endeavor to satisfy the requirements of the tax law. . . . In any case, a return must be signed by a taxpayer under penalties of perjury."

(Citations omitted and emphasis added.). *Tonsberg* includes the requirement that a return "demonstrates an honest and genuine endeavor to satisfy the requirements of the tax law." This is essentially the "honest and reasonable intent" test employed by the United States Supreme Court.

Effect of Attachment of a Form W-2. On rehearing, appellant appears to argue that his attachment of a Form W-2 to his zero return was sufficient to make the return valid—even though appellant had previously argued that the Form W-2 should not be used in determining his income. He appears to argue that respondent should create a return from his attachments, despite appellant having placed zeros in the locations that requested amounts for California adjusted gross income, taxable income, and tax. This would defeat the purpose of R&TC section 18501. Section 18501 requires a return to state specifically the items of an individual's gross income from all sources and the deductions and credits allowable. As we quoted from *Moore, supra:* "In our self-reporting tax system the government should not be forced to accept as a return a document which plainly is not intended to give the required information." And, again, from *Commissioner v. Lane-Wells Co., supra:* "The purpose is not alone to get tax information in some form but also to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished."[10] Appellant's attachment of a Form W-2 has not resulted in a return that meets these requirements.

Conclusion

This Board's prior position, that "zero return" forms are not valid returns, is both well reasoned and strongly supported by statutory and case law. To the extent that the reasoning in *Long* is in conflict with the cited cases from the other circuits, we find the decisions from the other circuits to be more persuasive. Returns that do not contain sufficient data from which

[10] At the rehearing, respondent cited the recent case of *Haines v. Commissioner,* 2000 RIA TC Memo ¶ 2000-126. Although *Haines* is distinguishable from the present facts, it concerned the untimely and unsigned returns of an airline pilot who reported no income but did attach Forms W-2. The taxpayer made arguments similar to those made by appellant. The court sustained the penalties that had been imposed by the Internal Revenue Service, and imposed its own penalty of $25,000 for appellant's groundless and frivolous position.

respondent can compute and assess the tax liability of a particular taxpayer, or that do not demonstrate an honest and genuine endeavor to satisfy the requirements of California's tax law (including "zero returns") are not valid returns. Filing such a return places the filer at risk of the sanctions adopted by the legislature to enforce compliance with the tax laws.

Respondent's action, including the imposition of the late filing penalty and the notice and demand penalty, is hereby sustained.

Hodgson.dlf

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 19048 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of LaVonne A. Hodgson against a proposed assessment of personal income tax and penalties be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of February, 2002, by the State Board of Equalization, with Board Members Mr. Klehs, Mr. Andal, Mr. Parrish, Mr. Chiang and *Ms. Marcy Jo Mandel present.

John Chiang, Chairman

Johan Klehs, Member

Dean Andal, Member

Claude Parrish, Member

* Marcy Jo Mandel, Member

*For Kathleen Connell per government code section 7.9.