

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)	
)	Nos. 89A-1337-ES
WALTER R. BAILEY)	91A-0517-ES

For Appellant: Walter R. Bailey

For Respondent: H. Kent Holman
Counsel

OPINION

These appeals are made pursuant to section 18593^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Walter R. Bailey against proposed assessments of personal income tax and penalties in the total amounts of \$4,168.99 and \$3,596.38 for the years 1987 and 1988, respectively.

^{1/} Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue.

The issues presented by these appeals are: (1) whether the Franchise Tax Board properly assessed additional taxes against appellant for the above years; and (2) whether it is appropriate to levy a penalty against appellant for prosecution of frivolous appeals.

Appellant did not file personal income tax returns for 1987 and 1988. The Franchise Tax Board (FTB) issued notices of proposed assessment (NPA's), estimating appellant's tax liability based on Employment Development Department (EDD) information. Appellant presented typical tax protestor arguments against the system of personal income tax, which were rejected by the FTB. These appeals timely followed.

To gather the information necessary to properly determine whether the FTB erred in its assessment for 1987, this board requested that appellant file a valid return or a statement under penalty of perjury containing all the information necessary to determine his tax liability. In addition, he was informed that the "tax protestor" arguments he raised were previously rejected in the Appeal of Fred R. Dauberger, et al., decided by this board March 31, 1982. Appellant was asked to address why the FTB assessment was in error and cautioned that Dauberger-type arguments would not suffice. For 1988, the FTB similarly requested a return and advised appellant that recurring Dauberger arguments would not be considered by the State Board of Equalization.

Appellant submitted, for each year, a statement with his income information entitled, "Return Statement and Claim for Refund in lieu of 540 Form ("Return Statements")." In response to our request for a non-Dauberger explanation of his position, appellant set forth the following arguments: (1) an incorrect "division" within the FTB issued the initial request for information; (2) respondent was not authorized to use the EDD information as such was exclusively for government employees and he was not a government employee; (3) the FTB's 540 return required signature under penalty of perjury thus subjecting him to potential criminal penalties in violation of his Fifth Amendment rights against self-incrimination; (4) the protest hearings before the FTB violated due process requirements; (5) due process will be violated if this board fails to determine whether he was given fair and impartial hearings before the FTB.

We find that the FTB's assessments of additional tax against appellant were appropriate. It is well established that the findings of the FTB are presumed to be correct and it is the taxpayer upon whom rests the burden of producing sufficient evidence to overcome the presumption of correctness. (Appeal of Harold and Lois Livingston, Cal. St. Bd. of Equal., Dec. 13, 1971; Appeal of Richard A. and Virginia R. Ewert, Cal. St. Bd. of Equal., Apr. 7, 1964.)

The income information contained in appellant's Return Statements was consistent with that used to compute the proposed assessments made by respondent. The Return Statements, therefore, did not show that the FTB assessments were incorrect. Appellant's arguments that an incorrect division within the FTB issued requests for information from him and misused EDD information are groundless. Where a taxpayer fails to file a return, the FTB is authorized to estimate from "any available information" a taxpayer's net income. (Rev. and Tax. Code § 18648.) It is given great latitude to seek such data and its authority includes the ability to request and use EDD information. (Appeals of

R. and Sonja J. Tonsberg, Cal St. Bd. of Equal., Apr. 9, 1985.) These arguments therefore are not sufficient to overcome respondent's presumption of correctness.

Moreover, we note that appellant has submitted recurrent tax protestor arguments previously rejected by this board and the courts. He sets forth constitutional arguments such as Fourth and Fifth Amendment contentions, which this board is precluded from determining. (Cal. Const., art. III, § 3.5; Appeal of Joan Muncaster, Cal. St. Bd. of Equal., Apr. 5, 1984; Appeal of Liselotte Bump, Cal. St. Bd. of Equal., Feb. 1, 1983.) However, we would note that appellant's concern over due process fails to consider that due process is satisfied with respect to tax matters so long as an opportunity is given to question the validity of a tax at some stage of the proceedings. It has long been held that more summary proceedings are permitted in the field of taxation because taxes are the lifeblood of government and their prompt collection is critical. (People v. Skinner, 18 Cal.2d 349 [115 P.2d 488] (1941); People v. Sonleitner, 185 Cal.App.2d 350 [8 Cal.Rptr. 528] (1960).) Accordingly, we find that, for all of the above reasons, appellant has failed to meet his burden to prove that the assessments of the FTB were incorrect.

We now turn to the issue of whether section 19414 penalties should be imposed against appellant for prosecution of nonmeritorious appeals before this board. In Dauberger, supra, we rejected the claims of 32 appellants which enumerated many of the usual contentions against the personal income tax system, versions of which are here propounded by appellant. Dauberger stands for the proposition that we will not treat with deference tax protestor cases where it is clear that the arguments have previously been held as meritless. The primary motivation for instituting such an appeal can only be to delay and undermine the system of taxation. Moreover, when individuals have general objections to the tax system and refuse to pay their assessments, then much more is put into jeopardy than just the nonpayment of a tax, for tied to our collection of taxes is provision of basic public benefits such as education and public safety. Taxes are the price we pay for organized society. (White v. Commissioner, 72 T.C. 1126 (1979).)

For at least two consecutive tax years, appellant has refused to file returns, forced years of extended appeal processes, and has used this forum to assert groundless contentions. Appellant has abused the processes of this board and has wasted its resources. It is incumbent upon us to protect the integrity of our function as an effective body of review and not allow it to be impeded by unfounded appeals. Accordingly, we hold that penalties against appellant for the prosecution of unmeritorious appeals before this board are appropriate, and therefore impose section 19414 penalties in the amount of \$2,500 for each of the years 1987 and 1988.

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 Walter R. Bailey against proposed assessments of additional personal income tax in the amounts of \$4,168.99 and \$3,596.38 for the years 1987 and 1988, respectively, be and the same are hereby sustained, and section 19414 penalties are imposed in the total amount of \$5,000.

Done at Sacramento, California, this 20th day of February, 1992, by the State Board of Equalization, with Board Members Mr. Sherman, Mr. Dronenburg, Mr. Fong and Ms. Scott present.

Brad Sherman _____, Chairman

Ernest J. Dronenburg, Jr. _____, Member

Matthew K. Fong _____, Member

Winnie Scott* _____, Member

_____, Member

*For Gray Davis, per Government Code section 7.9
bailey.es