

Appeal of Arthur W. Keech

Appellant, a resident of California, filed a timely signed personal income tax return Form 540 for 1973 that contained no information regarding his income or deductions for that year. On the face of the form, appellant attached a statement objecting to the form of the return as an invasion of privacy and a violation of the prohibition against self-incrimination, and he also declared that he had not received any income in constitutionally lawful dollars redeemable in gold or silver. Subsequently, respondent received a withholding tax statement indicating that appellant had received wages of \$13,367 from the Long Beach Naval Shipyard during 1973. Respondent then mailed appellant a letter requesting him to file a return and advising him of the penalties for failure to file. When appellant did not **reply**, respondent issued a deficiency assessment based on appellant's income from the shipyard. This assessment became final on March 16, 1975.

Thereafter, respondent received an employer information report that appellant had been paid **\$2,908.14** in retirement income during 1973 from the U.S. Air Force. Respondent then sent appellant a letter advising him that the return form he had filed without financial data did not constitute a valid return, that available information indicated he was required to file a return, and that his failure to file could lead to the imposition of **various** penalties. Appellant again failed to reply, **causing** respondent to issue a second deficiency assessment for 1973. This assessment included appellant's military retirement income and two 25 percent penalties for failure to file a return and for failure to file after notice and demand. Appellant protested the assessment, and respondent's denial of that protest led to this appeal.

Appellant contends that he owes no tax because he has not received any income in "constitutional dollars" since March 18, 1968, when all gold and silver backing was removed from Federal Reserve notes. This argument was considered and rejected in the Appeal of Iris E. Clark, decided March 8, 1976, and in the Appeal of Donald H. Lichtle, decided October 6, 1976. On the authority of those decisions, we will sustain the assessment of additional tax.

With respect to the penalties for failure to file a timely return and for failure to file after notice and demand, (Rev. & Tax. Code, **§§ 18681 & 18683**), the

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initial question is whether the blank tax form appellant filed constituted a proper return. In this connection Revenue and Taxation Code section 18401 provides, in relevant part: ,

Every individual taxable under this part shall make a return to the Franchise Tax Board, stating specifically the items of his gross income and the deductions and credits allowed by this part, if he has for the taxable year--

* * *

(c) A gross income of over seven thousand dollars (**\$7,000**),... (Emphasis added.)

Respondent's regulations specify that the return of a California resident shall be on Form 540, (Cal. Admin. Code, tit. 18, reg. 18401-18404(e)), and they further state that:

Each taxpayer should carefully prepare his return so as fully and clearly to set forth the data therein called for. Imperfect or incorrect returns will not be accepted as meeting the requirements of the law. ... (Cal. Admin. Code, tit. 18, reg. 18401-18404 (f) .)

In light of the statute and regulations, it is clear that a Form 540 which does not contain any information regarding the taxpayer's income and deductions does not constitute a valid return. Therefore, the blank form appellant filed was not a "return" within the meaning of section 18401. (See United States v. Jordan, 508 F.2d 750 (7th Cir.), cert. den., 423 U.S. 842 [46 L. Ed. 2d 621 (1975)]; United States v. Porth, 426 F.2d 519 (10th Cir.), cert. den., 400 U.S. 824 [27 L. Ed. 2d 53] (1970).)

Under Revenue and Taxation Code sections 18681 and 18683, the assessment of penalties for failure to file a timely return and for failure to file after notice and demand must be sustained unless the taxpayer establishes that the failures were due to reasonable cause and not due to willful neglect. (See Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 7, 1977; Appeal of Estate of Marilyn Monroe, Deceased, Cal. St. Bd. of Equal., April 22, 1975.) Appellant has

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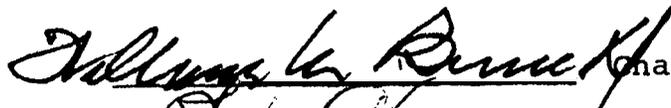
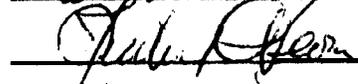
not **addressed** himself specifically to this point, and we fail to perceive any reasonable basis for his refusal to file a proper return. Without question, his frivolous attacks on the constitutionality of the monetary and tax systems of this country do not amount to a justification for non-filing. (Cf. United States v. Porth, supra, 426 F.2d at 523; see also Appeal of William A. Hanks, Cal. St. Bd. of Equal., April 6, 1977.) The penalty assessments will therefore be sustained.

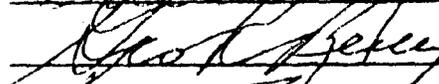
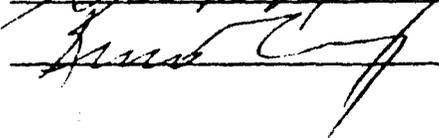
O R D E R

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

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 Arthur W. Keech against a proposed assessment of additional personal income tax and penalties in the total amount of \$207.78 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of July , 1977, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member