

Appeal of Ottar G. Balle

The question for decision is whether appellant has established error in respondent's proposed assessments of additional tax and penalties.

During 1976 and 1977 appellant resided in California, where he was a salaried employee of Spaulding Equipment Co., Inc. He failed to file California personal income tax returns for those years. Upon discovering that fact, respondent advised appellant to file appropriate returns for 1976 and 1977 and, when he did not comply with that demand, respondent issued its notices of proposed assessment. The amounts of the deficiencies were computed on the basis of salary information supplied by appellant's employer to the California Employment Development Department and a copy of a 1976 W-2 Statement issued by Spaulding Equipment Co., Inc. to appellant. Those sources indicated that appellant had earned \$16,700.00 and \$17,050.00 in 1976 and 1977, respectively. Appellant was allowed the standard deduction and a personal exemption credit for each year; Included in the proposed assessments were penalties for failure to file a timely return (Rev. & Tax. Code, § 18681), failure to file after notice and demand (Rev. & Tax. Code, § 18683), and negligence (Rev. & Tax. Code, § 18684). The assessment for 1977 also included a penalty for failure to pay estimated tax (Rev. & Tax. Code, § 18685.05). Appellant protested respondent's proposed assessments of tax and penalties but never filed any tax returns. In due course, respondent affirmed those assessments and this timely appeal followed.

It is settled law that respondent's determinations of tax and penalties, other than the fraud penalty, are presumptively correct, and the burden rests upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414] (1949); Appeal of Myron E. and Alice-Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Appellant's sole contention is that he did not receive sufficient income in 1976 and 1977 to require the filing of tax returns because the Federal Reserve notes which he earned in those years were not constitutionally lawful dollars redeemable in gold or silver. On numerous prior occasions we have rejected this argument as being totally without merit., (See, e.g., Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977; Appeal of

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Donald H. Lichtle, Cal. St. Bd. of Equal., Oct. 6, 1976; and Appeal of Iris E. Clark, Cal. St. Bd. of Equal., March 8, 1976.) On the authority of those decisions, and for the reasons stated therein, we will sustain respondent's assessment of additional tax.

In prior opinions we have also upheld the penalties assessed by respondent in cases of this type. (See, e.g., Appeal of Arthur W. Keech, supra, and Appeal of Richard E. Krey, Cal. St. Bd. of Equal., Feb. 3, 1977.) Nothing has been presented here which would justify any departure from those earlier holdings. Appellant herein **has offered** no reasonable explanation for his failure to file valid tax returns or to pay his full tax liability for the years in question, and the penalties therefore appear to have been properly imposed.

For the reasons stated above, we are sustaining respondent's action with respect to the proposed assessment of additional tax and penalties against appellant. However, a minor adjustment in one of the penalty assessments must be made. The 1976 withholding statement (W-2) issued to appellant by his employer, Spaulding Equipment Co., Inc., indicates that during 1976 California personal income tax in the amount of \$305.92 was withheld from his salary. Respondent has advised us that appellant will be allowed a credit against the amount of the tax deficiency for 1976 to reflect that **withholding.**^{1/} An appropriate downward adjustment must also be made in the penalty assessed for appellant's failure to file a timely 1976 return since, under the provisions of section 18681 of the Revenue and Taxation Code, the amount of tax prepaid through withholding reduces the base upon which that penalty is computed. No adjustment of the other penalties is required..

^{1/} The information available to respondent indicates that no California personal income tax was withheld from appellant's salary during 1977. If appellant can prove otherwise, respondent has indicated its willingness to allow an appropriate withholding credit against the 1977 deficiency.

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 Ottar G. Balle against proposed assessments of additional personal income tax and penalties in the total amounts of \$1,281.85 and \$1,396.71 for the years 1976 and 1977, respectively, be and the same is hereby modified in that a credit shall be allowed against the proposed assessment of additional tax for 1976 to reflect the amount of California personal income tax withheld from appellant's salary during that year; and the amount of the penalty imposed for 1976 under section 18681 of the Revenue and Taxation Code shall be reduced to reflect such withholding. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 6th day of February, 1980, by the State Board of Equalization.

<u><i>Paul J. Moore</i></u>	, Chairman
<u><i>John H. Kelly</i></u>	, Member
<u><i>William W. Berman</i></u>	, Member
_____	Member:
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