

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRANK L. MIELCAREK)

Appearances:

For Appellant: A. J. Porth
For Respondent: James T. **Philbin**
Supervising 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 Frank L. Mielcarek against a proposed assessment of additional personal income tax and penalties in the total amount of \$4,093.68 for the year 1978.

Appeal of Frank L. Mielcarek

The question for determination is whether appellant has established any error in respondent's proposed assessment of personal income tax and penalties.

Appellant did not file a California personal income tax return for the year in issue. After receiving information indicating that appellant was required to file a return for the year 1978, respondent advised him that it had no record of his having filed a return for that year, and it demanded that he file. Appellant stated that he was not subject to the California personal income tax and, therefore, he was not required to file a return. Respondent then issued a proposed assessment based upon information obtained from the California Employment Development Department. Included in the proposed assessment are penalties for failure to file a return, failure to file after notice and demand, negligence, and failure to pay estimated tax.

Respondent's determinations of additional tax and penalties are presumptively correct, and appellant has the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) No such proof has been presented. Appellant's contentions that he is not a "taxpayer" and is not required to file returns are clearly without merit, based as they are on a variety of frivolous "constitutional" objections to the existing system of income taxation. (See Appeal of Harry Sievert, Cal. St. Bd. of Equal., April 8, 1980; Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) On the basis of the evidence before us, we can only conclude that respondent correctly computed appellant's tax liability, and that the imposition of penalties was fully justified. Respondent's action in this matter will, therefore, be sustained.

