

Appeal of Arthur G. Horton, Jr.

The sole issue for determination is whether appellant has established any error in respondent's determination of personal income tax and penalties for 1978.

Appellant did not file a California personal income tax return for 1978 although required to do so, When respondent demanded that a return be filed, appellant failed to comply. Thereafter, respondent issued the notice of proposed assessment in issue. The assessment was based upon information obtained from the California Employment Development Department. The proposed assessment included penalties for failure to file a return (Rev. & Tax. Code, § 18681); failure to file upon notice and demand (Rev. & Tax. Code, § 18683); failure to pay estimated tax (Rev. & Tax. Code, § 18685.05); and negligence (Rev. & Tax. Code, § 18684). Appellant protested, but refused to file a return. In due course the proposed assessment was affirmed, and this appeal followed,

It is well settled that respondent's determinations of additional tax and penalties are presumptively correct, and the burden is upon the taxpayer to prove them erroneous, (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Donald W. Cook, Cal. St. Bd. of Equal., May 21, 1980; Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) In support of his position, appellant has merely recited the familiar list of statutory and constitutional objections to respondent's action. Without exception, these contentions have been rejected as frivolous in previous decisions of the federal judiciary and this board. (See, e.g., United States v. Whitesel, 543 F.2d 1176 (6th Cir. 1976); United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 469] (1973); United States v. Porth, 426 F.2d 519 (10th Cir. 1970); Appeal of Arthur J. Porth, supra; Appeal of Armen B. Condo, Cal. St. Bd. of Equal., July 26, 1977.) We see no reason to depart from these decisions in this appeal.

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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 G. Horton, Jr., against a proposed assessment of personal income tax and penalties in the total amount of \$2,645.24 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of January, 1982, by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

_____, Chairman
George R. Reilly, Member
Ernest J. Dronenburg, Jr., Member
Richard Nevins, Member
_____, Member