

Appeal of Ralph E. Lattimer

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

Appellant did not file California personal income tax returns for the appeal years although required to do so. When respondent demanded that returns be filed for those years, appellant failed to comply. Thereafter, respondent issued the notices of proposed assessment which are in issue. The assessments were based upon information obtained from the California Employment Development Department. The proposed assessments included penalties for failure to file a return (Rev. & Tax. Code, § 78681); 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 assessments were affirmed, and this appeal followed.

It is well settled that respondent's determinations of additional tax, including the penalties involved in this appeal, 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.) The familiar contention that appellant is not subject to the Personal Income Tax Law or required to file a valid return because of certain constitutional guarantees is of no avail to the taxpayer in sustaining that burden, (See Appeal of Marvin L. and Betty J. Robey, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Ruben B. Salas, Cal. St. Bd. of Equal., Sept. 27, 1978; Appeal of Myrtle T. Peterson, Cal. St. Bd. of Equal., April 6, 1978; Appeal of Arthur J. Porth, supra.) Even if that were not the case, we believe that section 3.5 of article III of the California Constitution precludes our determining that the statutory provisions involved are unconstitutional or unenforceable. Accordingly, respondent's determination of additional tax and penalties must be sustained.

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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 Ralph E. Lattimer against proposed assessments of personal income tax and penalties in the total amounts of \$532.53 and \$3,341.68 for the years 1976 and 1977, respectively, 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