

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
E. R. STUDE)

Appearances:

For Appellant: A. J. Porth
For Respondent: John R. Akin and
Jon **Jensen**
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 E. R. Stude against proposed assessments of additional personal income tax and penalties in the total amounts of \$212.51, \$1,244.54 and \$27.00 for the years 1976, 1977 and 1978, respectively.

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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 filed a timely return for 1976 reflecting a tax liability of \$75.00. However, no payment was made. Upon review of appellant's 1976 return, respondent noted that appellant failed to report the balance of a gain resulting from an installment sale made in 1973. Respondent demanded additional information concerning appellant's failure to report the installment gain on her 1976 return. When no information was forthcoming, respondent issued a notice of proposed assessment reflecting the balance on the unreported deferred gain from the 1973 installment sale. A penalty for failure to furnish information upon notice and demand was also assessed (Rev. & Tax. Code, § 18683).

Respondent also determined from the property tax roll that appellant sold additional real property in 1977. However, respondent's records indicated that appellant failed to file a personal income tax return for either 1977 or 1978. Appellant failed to respond to respondent's demand that she file returns for 1977 and 1978. Thereafter, respondent estimated appellant's income and issued notices of proposed assessment for both years. Included in the proposed assessment were penalties for failure to file a return (Rev. & Tax. Code, § 18681); failure to file a return after notice and demand (Rev. & Tax. Code, § 18683); and negligence (Rev. & Tax. Code, § 18684).

Appellant's protest was denied 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 that the burden of proving them erroneous is upon the taxpayer. (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.) Furthermore, where the taxpayer files no return or otherwise refuses to cooperate in the ascertainment of her income, respondent has great latitude in determining the amount of tax liability, and may use reasonable estimates to establish the taxpayer's income. (See, e.g., Joseph F. Giddio, 54 T.C. 1530 (1970); Norman Thomas, ¶ 80,359 P-H Memo. T.C. (1980); Floyd Douglas, ¶ 80,066 P-H Memo. T.C. (1980); George Lee Kindred, ¶ 79,457 P-H Memo. T.C. (1979).)

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In support of her position, appellant has recited the familiar list of feigned 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, Cal. St. Bd. of Equal., Jan. 9, 1979; 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 E. R. Stude against proposed assessments of additional personal income tax and penalties in the total amounts of \$212.51, **\$1,244.54** and \$27.00 for the years 1976, 1977 and 1978, 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