



Appeal of James A. Bluthenthal

Appellant did not file a California personal income tax return for 1978. When respondent received information from the Employment Development Department (EDD) disclosing income earned by appellant in 1978, it demanded that appellant file the required return. Appellant still did not file, and a proposed assessment was issued which included penalties for failure to file a return (Rev. & Tax. Code, § 18681) and failure to file a return after notice and demand (Rev. & Tax. Code, § 18683).

At appellant's protest hearing, he produced W-2 forms which agreed with the income figures obtained from EDD and showed \$396.83 withheld for state income tax. When the assessment was subsequently affirmed, this amount was credited to him.

Appellant contends that filing an income tax return is voluntary and he has chosen not to file; therefore, he has no tax liability and the penalties imposed were improper. Appellant also argues that he had no taxable income or taxable year in 1978 and that to file would violate his constitutional rights.

It is axiomatic that, respondent's determinations are presumed correct, and the appellant must prove that they are wrong. Appellant, in this appeal, has presented no evidence which indicates that the subject assessment is in any way erroneous.

Appellant's arguments are the same or similar to those made in many other appeals, and we have consistently found them to be without merit. (See, e.g., Appeal of Chester J. Smigielski, Cal. St. Bd. of Equal., Feb. 1, 1981; Appeal of Cyrena P. Hellman, Cal. St. Bd. of Equal., Nov. 16, 1981; Appeal of Helen Lisle, Cal. St. Bd. of Equal., May 19, 1981.) Some of appellant's arguments are slightly different from those we have considered in other appeals, but are, upon examination, the same in their lack of merit. None provide any basis for finding respondent's determination to be incorrect.

Respondent's action is, therefore; 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 James A. Bluthenthal against a proposed assessment of additional personal income tax and penalties in the total amount of \$2,386.00 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of March , 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