



82-SBE-078

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
DAVID K. BARKER)

For Appellant: David K. Barker,
 in pro. per.

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 David K. Barker against proposed assessments of personal income tax and penalties in the total amounts of \$2,652.43 and \$5,060.68 for the years 1978 and 1979, respectively.

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For taxable years 1978 and 1979, appellant filed California personal income tax return forms which contained no information about his income, deductions or credits. In several places on the forms, appellant entered the words "object-self incrimination.* Respondent demanded that appellant file valid returns. Appellant has not filed any returns in response to that demand.

For taxable year 1977, appellant, a licensed chiropractor, had filed a California personal income tax return reporting a gross income of \$17,223. To that amount, respondent added a yearly 15 percent growth and inflation factor to estimate appellant's income for 1978 and 1979. Based upon those estimates, respondent issued notices of proposed tax assessments for 1978 and 1979. To the proposed tax deficiencies for each of those years, respondent added penalties for failure to file a return (Rev. & Tax. Code, § 18681), for failure to file a return after notice and demand or failure to furnish information requested (Rev. & Tax. Code, § 18683), and for negligence (Rev. & Tax. Code, § 18684). To the proposed assessment for 1979, respondent also added a penalty for failure to pay estimated tax (Rev. & Tax. Code, § 18685.05).

Appellant: protested and argued: (1) that his gross incomes were lower and his expenses were higher than were contemplated by the proposed assessments; and (2) that no penalties could be assessed because he had claimed his privilege from self incrimination on the returns he had filed for the years in question.

Respondent later affirmed its proposed assessments. This appeal followed. The issue presented by this appeal is whether appellant has established error in respondent's proposed assessment of personal income tax and penalties.

Where a taxpayer provides no information regarding his income and deductions, respondent is authorized to compute income by whatever method will, in its opinion, clearly reflect that income. No particular method is required since circumstances will vary in individual cases. (Rev. & Tax. Code, § 18648; Appeal of John and Codelle Perez, Cal. St. Bd. of Equal., Fob.16, 1971; Harold E. Harbin, 40 T.C. 373 (1963).) Furthermore, the determination of a deficiency by the taxing authority is presumed **correct**, and the burden is on the taxpayer to prove that the correct income was an amount

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less than that on which the deficiency assessment was based. (Kenney v. Commissioner, 111 F.2d 374 (5th Cir. 1940); Appeal of John and Codelle Perez, supra.) In this case, appellant has stated that the assessments were excessive. But he has not presented evidence which proves that the correct amount of income was a lesser amount.

In previous cases, we have consistently upheld penalty assessments such as those now at issue. (Appeal of Ronald D. Grandpre, Cal. St. Bd. of Equal., Sept. 29, 1981; Appeal of Donald W. Cook, Cal. St. Bd. of Equal., May 21, 1980.) Again, we must conclude that the penalties for failure to file a return, failure to file after notice and demand, negligence, and failure to pay estimated tax were fully justified.

Accordingly, we have no alternative but to sustain respondent's determination of additional taxes and penalties due from appellant for 1978 and 1979.

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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 David K. Barker against proposed assessments of additional personal income tax and penalties in the total amounts of \$2,652.43 and \$5,060.68 for the years 1978 and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day of March , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, Mr. Nevins and Mr. Cory present.

William M. Bennett , Chairman
George R. Reilly , Member
Ernest J. Dronenburg, Jr. , Member
Richard Nevins , Member
Kenneth Cory , Member