



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
JOHN C. ALDEN)

Appearances:

For Appellant: John C. Alden,
in pro. per.

For Respondent: Carl G. Knopke
Counsel

Allen R. Wildermuth
Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of John C. Alden against proposed assessments of additional personal income tax and penalties in the total amounts of \$14,746.38, \$13,639.07, and \$15,956.34 for the years 1977, 1978, and 1979, respectively.

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The issues for determination are: (1) whether the privilege against self-incrimination, asserted to avoid incrimination for a prior federal income tax violation, excuses a refusal to file valid state income tax returns; and (2) whether appellant has established any error in respondent's determination.

Appellant John C. Alden, a medical doctor, did not file California personal income tax returns for the years at issue. After notices from respondent requesting him to file returns, appellant replied that he was not liable for state income tax. Respondent then issued proposed assessments for 1977 and 1978, determined from available information, and a proposed assessment for 1979, based upon the 1978 assessment with an added growth and inflation factor of fifteen percent. The proposed assessments included penalties for failure to file, failure to file on notice and demand, negligence, and failure to pay estimated tax. (Rev. & Tax. Code, §§ 18681, 18683, 18684, and 18685.05.) Appellant subsequently filed state income tax returns for 1977 and 1978, filling in only his name, address, social security number, and filing status. In the remaining blanks on the form, he inserted "0", "None"; or an indication that he was objecting under the Fifth Amendment.

Prior to 1980, the Criminal Investigation Division of the Internal Revenue Service commenced an investigation of appellant due to his failure to file valid federal income tax returns for the years 1975 through 1979. Appellant asserts that, under the Fifth Amendment privilege against self-incrimination, he is entitled to withhold from respondent any and all statements about his income, since respondent has authority (under Rev. & Tax. Code, § 19286) to transmit the material to the Internal Revenue Service, which could use the information in a federal criminal proceeding against him.

It has long been held that the Fifth Amendment privilege against self-incrimination will not support a blanket failure to supply any income and expense information on a tax return form. (United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 469] (1973); Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977.) In the instant case, appellant claims that the Fifth Amendment permits him to refuse to file valid state income tax returns, because such returns would tend to incriminate him in any

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federal criminal action undertaken against his failure to file valid federal tax returns. In 1980, the Ninth Circuit rejected this practice, holding that a taxpayer may not invoke the Fifth Amendment to avoid incrimination for a prior violation of income tax law. (United States v. Carlson, 617 F.2d 518 (9th Cir. 1980).) **The** court there stated that a taxpayer may not use the Fifth Amendment "privilege's protective capacity to further a calculated effort to avoid the payment of taxes" (Id. at 522), for if the taxpayer's "assertion of the privilege were valid, it would license a form of conduct that would undermine the entire system of personal income tax collection." (Id. at 520; see also United States v. Egan, 459 F.2d 997 (2d Cir.), cert. den., 409 U.S. 875 [34 L.Ed.2d. 1271 (1972).]) We cannot permit appellant's avoidance of federal taxes to justify his avoidance of state taxes.

Appellant also raises the contention that the Federal Reserve notes in which he has been paid are not taxable as income. The claim that Federal Reserve notes are not legal tender for state or federal tax purposes has been conclusively rejected as without merit. (United States v. Gardiner, 531 F.2d 953 (9th Cir.), cert. den., 429 U.S. 853 [50 L.Ed.2d 128] (1976); Beery v. County of Los Angeles, 116 Cal.App.2d 290 [253 P.2d 1005] (1953); Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.)

Appellant further argues that his income was lower, and his expenses greater, than respondent estimated. It has long been settled that respondent's determinations of additional tax and penalties are presumed correct and the burden is on the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Harold G. Jindrigh, Cal. St. Bd. of Equal., April 5, 1977.) Respondent reasonably reconstructed appellant's income from tax returns filed by the medical corporation of which appellant was president, and from information provided by the Employment Development Department and other sources. Since the taxpayer has presented absolutely no financial information which would cast doubt upon respondent's determinations of income and deductions, his allegation of improper computation of his tax liability cannot succeed. (See Appeal of Francis J. Pearson, Cal. St. Bd. of Equal., May 19 1981; Appeal of William C. Vogel, Cal. St. Bd. of Equal., Jan. 6, 1981.)

At a hearing before this board, appellant requested that the record of Ronald W. Matheson's appeal to

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this board be incorporated into the instant appeal. Our granting of appellant's request will not help his case, since we found Matheson's various constitutional arguments to be as frivolous as we now find appellant's. (See Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980.)

In Matheson, the only issue on which the taxpayer prevailed concerned the penalty imposed for failure to file a return. There, the tax liability had originally been calculated without taking into account state personal income taxes that the record showed were withheld from the taxpayer's salary during the year in question; respondent subsequently reduced the tax liability to reflect the amount of tax withheld. We agreed with the taxpayer that the penalty for failure to file a return, assessed at 25% of the tax deficiency, should also be reduced to reflect the credit for tax withheld. (Rev. & Tax. Code, § 18681.)

The assessments in the instant case also include penalties for failure to file returns. They are justifiably imposed because appellant's filing of blank Form 540s does not constitute the filing of "returns." (Rev. & Tax. Code, § 18401; Cal. Admin. Code, tit. 18, reg. 18401-18404(f); Appeal of Ruben B. Salas, Cal. St. Bd. of Equal., Sept. 27, 1978.) We see no reason to reduce them to account for credits for taxes withheld from salary as we did in Matheson, since appellant has not produced the slightest evidence to indicate that any taxes were in fact withheld. Appellant has the burden of proving his entitlement to such credits (Appeal of Ronald W. Matheson, supra); he has failed to do so.

As to the other penalties imposed against appellant, in cases of this type we have consistently upheld penalties **such as** those assessed herein. (Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979.) The record indicates that the various penalties imposed in this case were fully justified.

For the foregoing reasons, respondent's actions 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 protests of John C. Alden against proposed assessments of additional personal income tax and penalties in the total amounts of \$14,746.38, \$13,639.07, and \$15,956.34 for the years 1977, 1978, and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of July, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett , Chairman

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

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