

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
GARY C. CUSICK, JR.)

For Appellant: Gary C. Cusick, Jr.,
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 Gary C. Cusick, Jr. against a proposed assessment of additional personal income tax and penalties in the total amount of \$1,026.10 for the year 1979.

Appeal of Gary C. Cusick, Jr.

The question presented is whether appellant has shown any error in respondent's proposed assessment:.

Appellant filed a 1979 return Form 540 which was devoid of information regarding his income, except for the notation that he had received \$244.45 in U.S. Marine Corps reserve pay. On a number of lines on the form, he wrote "object: self-incrimination." Respondent advised appellant that he had not filed a valid return, and demanded that he file one containing the required financial information. When he failed to reply, respondent determined his income from available information and issued a proposed assessment of tax, including penalties for delinquent filing, failure to file after notice and demand, and negligence.

Respondent's determinations of additional tax and penalties are presumptively correct, and the taxpayer has the burden of proving that they are wrong. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) No error has been shown. Appellant's only defense is the misguided notion that the mere assertion of his right not to incriminate himself will immunize him from all tax liability. As we explained in the Appeals of Fred R. Dauberger, et al., decided by this board on March 31, 1982, a blanket declaration of that privilege is not a valid assertion of it, and the privilege is not available when it is claimed as part of a scheme designed to frustrate the tax laws.

For the above reasons, respondent's action in this matter will be sustained.

