



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
EDWARD DURLEY }

For Appellant: Edward Durley,
in pro. per.
For Respondent: James T. Philbin
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision [a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of E. Durley for refund of personal income tax and penalties in the total amount of 3490.00 for the year 1979.

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After receiving information indicating that appellant should have filed a personal income tax return for 1979, respondent notified him that it had no record of his return and demanded that he file one. When appellant failed to reply, respondent issued a proposed assessment based on information obtained from the Employment Development Department. Penalties for delinquent filing, failure to file after notice and demand, and negligence were included in the assessment. Appellant protested the assessment on various constitutional grounds, including the assertion that Federal Reserve notes are not constitutional "dollars," and he paid the assessment at the time of protest. Following denial of his protest, appellant filed this appeal, which will be treated as an appeal from the denial of a claim for refund. (Rev. & Tax. Code, § 19061.1.)

In a refund action, the taxpayer bears a double burden of proof. He must prove not only that the tax administrator's determination of his tax liability is incorrect, but also the correct amount of tax that he owes. (Griffin v. United States, 588 F.2d 521 (5th Cir. 1979).) Here, appellant has not met even his initial burden, for he has offered no evidence that respondent's assessment was erroneous in any respect. His objections to our nation's tax and monetary systems have been rejected in a multitude of cases, (see, e.g., Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31 1982; Appeal of Arthur W. Keech, Cal. St. Bd. of Equal.; July 26, 1977; Appeal of Donald H. Lichtle, Cal. St. Bd. of Equal., Oct. 6, 1976), and they obviously form no lawful basis for appellant's apparent belief that he owes no tax and has no duty to file proper income tax returns.

For the above reasons, respondent's action in this matter will 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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of E. Durley for refund of personal income tax and penalties in the total amount of 3490.00 for the year of 1979, 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

_____, Member

_____, Member