



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MARVIN W. AND IVA G. SIMMONS)

Appearances:

For Appellants: Marvin W. Simmons,
in pro. per.

For Respondent: Carl G. Knopke
Allen R. Wildermuth
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 Marvin W. and Iva G. Simmons against a proposed assessment of additional personal income tax and penalty in the total amount of \$2,101.28 for the year 1977 and on the protest of Marvin W. Simmons against proposed assessments of additional personal income tax and penalties in the total amounts of \$17,418.87 and \$15,305.04 for the years 1978 and 1979, respectively.

Appeal of Marvin W. and Iva G. Simmons

The issue is whether appellants have established any error in respondent's proposed assessments.

Appellants filed a timely joint return for 1977, reporting wage income of \$95,760, adjusted gross income of \$76,419, and an itemized deduction of \$38,121 under the heading "cash contributions for which you have receipts, cancelled checks, etc.," (Form 540, Schedule A). When respondent asked appellant for substantiation of the amount claimed, appellants responded by stating, "Claim First Amendment." Respondent then denied the claimed deduction for lack of substantiation and issued a Notice of Proposed Assessment which included a penalty for failure to furnish information upon demand (Rev. & Tax. Code, § 18683.)

Upon discovering that Marvin W. Simmons, a medical doctor and herein referred to as "appellant", had not filed returns for 1978 and 1979, respondent sent him several requests that he file returns for those years, but he refused on the basis that he was not required to file because he had no income. Nevertheless, appellant as president of Marvin W. Simmons Medical Corporation had reported that the corporation had compensated him in the amount of \$141,922 during the income year ended April 30, 1978 and \$94,500 during the income year ended April 30, 1979. Based on this information and the wages he had reported for 1977, respondent estimated appellant's taxable income and issued Notices of Proposed Assessments for 1978 and 1979. The proposed assessments included penalties for failure to file a return (Rev. & Tax. Code § 18681), failure to file upon notice and demand (Rev. & Tax. Code, § 18683), negligence (Rev. & Tax. Code, § 18684), and failure to pay the estimated tax (Rev. & Tax. Code, § 18685.05). Appellants protested and this appeal followed in due course.

Appellants advance manifold arguments, -among them that appellant Marvin W. Simmons is under a religious vow of poverty and therefore without income, that California's personal income tax is a voluntary tax which individuals may choose not to report and pay, that the respondent is without jurisdiction to administer California's personal income tax and this board is without jurisdiction to hear this appeal, that Federal Reserve Notes are not "dollars", and that the information requirement of the California Personal Income Tax Law violates his right to privacy and his privilege against self-incrimination.

Respondent's determinations of additional tax and penalties are presumptively correct, and the burden is upon

a

Appeal of Marvin W. and Iva G. Simmons

the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Donald W. Cook, Cal. St. Bd. of Equal., May 21, 1980; Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Myron E. and Alice 2. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.

Appellant contends that his income was exempt from taxation because his personal services were performed as an agent of a religious order. He claims to have subjected himself to a religious vow of poverty. Here, however, the appellant has not submitted evidence to support the existence of the required agency relationship, but instead has relied upon self-serving statements. In virtually identical situations, the board has found no merit to the contention and has ruled against the taxpayer. (Appeal of Jack V. and Allene J. Offord, Cal. St. Bd. of Equal., June 23, 1981; Appeal of James R. Sutherlin, Cal. St. Bd. of Equal., June 23, 1981; see also Carl V. McGahen, 76 T.C. No. 468 (March 26, 1981).) In addition, the record does not contain any information which would support the charitable deduction originally claimed by appellant.

Insofar as appellant has also proposed that California's income tax is voluntary, that respondent is without jurisdiction to administer California's personal income tax and we are without jurisdiction to hear and determine this appeal; that Federal Reserve Notes are not dollars, and the requirement that he provide information sufficient to constitute a personal income tax return violates his right to privacy and his privilege against self-incrimination, similar contentions have been rejected as frivolous in previous decisions of the federal judiciary and of this board. (See, e.g., United States v. Whitesel, 543 F.2d 1176 (6th Cir. 1976); United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 469] (1973); United States v. Porth, 426 F.2d 519 (10th Cir. 1970); Appeal of Arthur J. Porth, supra; Appeal of Armen B. Condo, Cal. St. Bd. of Equal., July 26, 1977, Appeal of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.) Under the circumstances, we must reject those contentions and respondent's actions will be sustained.

Appeal_of Marvin W. and Iva G. Simmons

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 Marvin W. and Iva G. Simmons against a proposed assessment of additional personal income tax and penalty in the total amount of \$2,101.28 for the year 1977, and on the protest of Marvin W. Simmons against proposed assessments of additional personal income tax and penalties in the total amounts of \$17,418.87 and \$15,305.04 for the years 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

_____, Member

_____, Member