82-SBE-196

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
PHYLLIS S. JOHNSON)

Appearances:

For Appellant: A. J. Porth

For Respondent: Mark McEvilly
Michael E. Brownell
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 Phyllis S. Johnson against proposed assessments of additional personal income tax and penalties in the total amounts of $2,445.60, $3,010.98, $3,516.98, and $3,890.88 for the years 1976, 1977, 1978, and 1979, respectively.

The issue presented by this appeal is whether appellant has established error in respondent's proposed assessments of additional. personal income tax or in the penalties assessed Eor the years in issue.

Appellant did not file California personal income tax returns for the years in issue. When she failed to comply with respondent's demand that she file returns, the subject proposed assessments were issued. Respondent based its estimation of appellant's income for the appeal years by applying a 15 percent growth and inflation factor for each of the years .in issue to the rental income reported on her 1975 return; a ten percent growth and inflation factor was applied to appellant's interest and dividend income. The subject proposed assessments include penalties for failure to file a return, failure to file upon notice and demand, failure to pay estimated income tax, and negligencu.

It is settled law that respondent's determinations of tax and penalties, other than the fraud penalty, are presumptively correct, and the burden rests upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201P.2d414] (1949); Appeal of Myron E. and Alice Z. Gire, Cal. St. Rd. of Equal., Sept. 10, 1969.) After reviewing the record on appeal, we can only conclude that no such proof has been presented here.

In support of her position that she is neither constitutionally nor statutorily subject to the California personal income tax, appellant has merely advanced a 'number of the same arguments which we rejected in the Appeals of Fred R. Dauberger, et al., decided by this board on March -3 1, 1982. We see no reason to depart from that decision in this appeal.

On the basis of the evidence before us, we can only conclude that respondent correctly computed appellant's tax liability for the years in issue, and that the imposition of penalties was fully justified. Respondent 's action in this matter will, therefore, be sustained.

Appeal of Phyllis S. Johnson

ORDER

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 Phyllis S. Johnson against proposed assessments of additional personal income tax and penalties in the total amounts of $2,445.60, $3,010.98, $3,516.98, and $3,890.88, for the years 1976, 1977, 1978, and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of August, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Ernest J. Droneqbucg, Jr., Member

Richard Nevins, Member

_____, Member

_____, Member