

Appeal of William Ramsey

The sole 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 for the years in issue.

Appellant's 1978 tax liability has previously been the subject of an appeal before this board; respondent's action was sustained in that appeal. (Appeal of William Ramsey, Cal. St. Bd. of Equal., Nov. 16, 1981.) Subsequent to the issuance of the assessment which gave rise to the above-cited appeal, respondent discovered that appellant had additional unreported income in 1978. Appellant's protest of the resultant second proposed assessment for 1978 constitutes part of this appeal.

Appellant filed a California personal income tax form 540 for 1979 which failed to disclose any information regarding his income, deductions, or credits. The subject notice of proposed assessment was issued after appellant failed to comply with respondent's demand that he file a valid return. Included in the proposed assessment for 1979, which was based upon information obtained from appellant's employer and the payor of his military annuity, are penalties for failure to file a return, failure to file upon notice and demand, failure to pay estimated income tax, and negligence. The same penalties are included in the subject proposed assessment for the year 19713.

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 [201 P.2d 414] (1949); Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. 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 his position, appellant has advanced a number of the same arguments which we rejected in the Appeals of Fred R. Dauberg et al., decided by this board on March 31, 1982. (See also Appeal of William Ramsey, supra.) We see no reason to depart from the cited decisions 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.

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Finally, we note that in his previous appeal before this board, appellant raised the same frivolous arguments rejected here. (Appeal of William Ramsey, supra.) As we stated in the Appeals of Robert K. Aboltin, Jr., et al., decided on June 29, 1982, "[t]o pursue an appeal under such circumstances can only be construed as an attempt to obstruct and delay the appellate review process." We find that appellant instituted and has pursued this proceeding merely for the purpose of delay. Accordingly, pursuant to Revenue and Taxation Code section 19414~~1~~^{1/} a penalty in the amount of five hundred dollars (\$500) shall be imposed against him.

1/ Section 19414 provides as follows:

Whenever it appears to the State Board of Equalization or any court of record of this state that proceedings before it under this part have been instituted by the taxpayer merely for delay, a penalty in an amount not in excess of five hundred dollars (\$500) shall be imposed. Any penalty so imposed shall be paid upon notice and demand from the Franchise Tax Board and shall be collected as a tax.

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O R D E R

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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 13595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of William Ramsey against proposed assessments of additional personal income tax and penalties in the total amounts of \$79.05 and \$1,423.11 for the years 1978 and 1979, respectively, be and the same is hereby sustained, and that a \$500 delay penalty under section 19414 be imposed against him and the Franchise Tax Board shall collect the same.

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. Dronenburg, Jr., Member
Richard Nevins, Member
_____, Member
_____, Member