



Appeal of John K. Strode

Respondent received information from the Employment Development Department indicating that appellant was required to file a California personal income-tax return for 1979. Having no record of such a return being filed, respondent demanded that appellant file. When appellant did not file a return, a proposed assessment was issued based on the wage and interest income information that respondent had received. Penalties were also imposed for failure to file and failure to file after notice and demand.

In August 1981, after filing this appeal, appellant filed a Form 540X, which reported only \$45.00 in interest income and \$488.57 in tax withheld. A W-2 form from appellant's employer, the State of California, was attached. Respondent determined that the Form 540X did not constitute a valid return, but has agreed to take into consideration the amount shown as withheld.

Appellant contends that wages are not income and that he is not required to file a return. He also argues that respondent's determination violates the state and federal constitutions.

We have recently considered the same wage and filing requirement contentions in Appeals of Fred R. Dauberger, et al., decided March 31, 1982, and rejected them as totally without merit. With respect to the constitutional issues raised, we are precluded from determining them because of both article III, section 3.5 of the California Constitution and our own policy of abstention from deciding such issues in appeals involving deficiency assessments, (Appeals of Fred R. Dauberger, et al., supra.)

For the reasons stated above, respondent's action is sustained.

Appeal of John K. Strobe

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 John K. Strobe against a proposed assessment of additional personal income tax and penalty in the total amount of \$1,767.00 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 29th day of June 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Mevins present.

William M. Bennett, Chairman

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

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