

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In **the Matter of the Appeal of**)
STANLEY E. CERWINSKI)

For Appellant: Stanley E. Cerwinski,
in pro. per.

For Respondent: James T. Philbin
Supervising 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 Stanley E. Cerwinski against a proposed assessment of additional personal income tax and penalty in the total amount of \$2,873.02 for the year 1978.

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Appellant filed a California personal income tax form 540 for 1978 which gave no information regarding his income, credits or deductions. Respondent notified appellant that this was not a valid return and requested that appellant file a proper return. When appellant failed to respond to this request, respondent issued a proposed assessment based upon wage information provided by appellant's employer. Respondent also imposed 25 percent penalties for failure to file a return and failure to file after notice and demand and a 5 percent negligence penalty. Appellant protested the proposed assessment, but **continued** to refuse to file a proper return. Therefore, respondent affirmed the proposed assessment, and this timely appeal followed.

Respondent's determinations of tax and penalty are presumed correct and the taxpayer bears the burden of proving them incorrect. (Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Appellant **has not** produced any evidence which might prove respondent's determination erroneous. Rather, he merely reiterates numerous statutory and constitutional objections which we have previously found to be meritless. (Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982; Appeal of Stanley E. Cerwinski, Cal. St. Bd. of Equal., Sept. 29, 1981.) These arguments are still without merit, and, therefore, respondent's action must be sustained.

This board has expressed its concern with appellants who abuse the appellate process by repeatedly pursuing frivolous appeals, and has warned such appellants that we would consider imposing the penalty contained in Revenue and Taxation Code section 19414 in such cases. (Appeals of Fred R. Dauberger, et al.; supra; Appeals of Robert R. Aboltin, Jr., et al., Cal. St. Bd. of Equal., June 29, 1982.) Section 19414 states:

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.

In this appeal, appellant has presented the identical arguments which this **board** rejected in his prior appeal.

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(Appeal of Stanley E. Cerwinski, supra.) Under these **circumstances, we conclude** that this appeal was instituted solely for the purpose of delay, and impose a \$500 penalty against appellant pursuant to section 19414.

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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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Stanley E. Cerwinski against a proposed assessment of personal income tax and penalty in the total amount of \$2,873.02 for the year 1978, be and the same is hereby sustained, and that the \$500.00 delay penalty under section 19414 be imposed against Stanley E. Cerwinski and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, this 14th day of October , 1982, by the State Board of Equalization,

William M. Bennett , Chairman

Conway H. Collis , Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins- , Member

_____ , Member