82-SBE-261

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
DAVID R. BENGTSON)

OPINION ON PETITION FOR REHEARING

On June 29, 1982, we sustained the Franchise Tax Board's assessment of additional personal income tax and penalties against David R. Bengtson in the total amount of $17,158.12 for the year 1979. Subsequently, appellant filed a petition for rehearing in which he argues that he is not required to file a state income tax return, that his 1979 earnings were not "income" subject to tax, that the Franchise Tax Board has no jurisdiction over him, and that the state income tax and-tax appeal systems are unconstitutional. In the Appeals of Fred R. Dauberger, et al., decided by this board on March 31, 1982, as well as in 'numerous other opinions of this board, we discussed and disposed of these arguments. We there found the above contentions to be without merit, and we see no reason to reach a different conclusion in the instant case. Appellant should also be aware that Article III, section 3.5 of the California Constitution precludes us from determining the constitutionality of the state statutory provisions involved in this appeal, Since appellant has provided no new facts which would cast doubt upon respondent's determination of his income tax liability, we-must affirm our prior action in this case.

Appeal of David R. Bengtson

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 18596 cf the Revenue and Taxation Code, that the petition of David R. Bengtson for rehearing of his appeal from the action of the Franchise Tax Board on his protest against a proposed assessment of additional personal income tax and penalties in the total amount of $17,158.12 for the year 1979 be and the same is hereby denied, and that our order of June 29, 1982, be and the same is hereby affirmed.

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

William 'M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member