82-SBE-277

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
FRANCIS J. PEARSON)

For Appellant: Francis J. Pearson, in pro. per.

For Respondent: James T. Philbin, Supervising Counsel

O P I N ION

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 Francis J. Pearson against a proposed assessment of personal income tax and penalties in the total amount of $3,929.34 for the year 1979.

Appellant did not file a California personal income tax return for 1979. Respondent received information indicating that appellant was required to file and it demanded that he do so. Appellant responded that he had income insufficient to be required to file.

Respondent issued a proposed assessment based on income information received from appellant's employer and the Department of the Navy, from which he was receiving retirement pay. Penalties were also imposed for failure to file, failure to file after notice and demand, negligence, and failure to pay estimated tax, A withholding credit of $61.91 shown on appellant's W-2 form has been credited to his account.

No evidence at all has been presented which might show that respondent's determination was erroneous. Appellant merely contends that wages are not "income," that he was not subject to income tax withholding, that Federal Reserve notes are not legal tender, and that only gold and silver are legal tender. Not only have these same arguments been consistently rejected when raised by other appellants (see, e.g., Appeals of Fred R. Dauberger, et al., Cal St. Bd. of Equal., March 31, 1982), but this same appellant has fully argued these issues in a previous appeal before us where we explicitly found them to be frivolous and without merit. (Appeal of Francis J. Pearson, Cal. St. Bd. of Equal., May 19, 1981.) They are no more meritorious now and respondent's action, therefore, is sustained.

Revenue and Taxation Code section 19414 provides:

> 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 the Appeals of Fred R. Dauberger, et al., supra, we noted that serious consideration would be given to imposing the section 19414 penalty in appeals which are repeated where the arguments have previously been considered and rejected as frivolous. To pursue an appeal under such circumstances can only be construed as an

attempt to obstruct and delay the appellate review process. (Appeals of Robert J. Aboltin, et al., Cal. St. Bd. of Equal., June 29, 1982.) We construe this appeal as such an attempt and, therefore, impose a $500 penalty against appellant pursuant to section 19414.

Appeal of Francis J. Pearson

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 Francis J. Pearson against a proposed assessment of personal income tax and penalties in the total amount of $3,929.34 for the year 1979, be and the same is hereby sustained, and that the $500 delay penalty under section 19414 be imposed against Francis J. Pearson and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, this 21st day of September, 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