82-SBE-301

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
THOMAS J. THEIS)

Appearances:

For Appellant: Thomas J. Theis, in pro. per.

For Respondent: Terry L. Collins Counsel

OPINION

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 Thomas J. Theis against a proposed assessment of additional personal income tax and a penalty in the total amount of $2,559.00 for the year 1979.

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Respondent determined that appellant was required to file a California income tax return for 1979. Respondent notified appellant that it had no record of his having filed a return for that year, and demandea that he file one. When he failed to reply, respondent issued a proposed assessment based upon available information, and imposed penalties for failure to file and failure to file after notice and demand.

Appellant challenges respondent's action on several theories. He contends that the Board of Equalization lacks jurisdiction to consider his appeal, places the burden -upon respondent to prove he owes a tax, and presents a variety of constitutional arguments. This board's Jurisdiction in the instant case is grounded in Revenue and Taxation Code sections 18593 and 18595, which give a taxpayer a right to file with the board a -timely appeal from respondent's action on a protest against a proposed personal income tax assessment, and which provide the board with power to hear, and resolve the appeal. As to appellant's second argument, it has long been settled that respondent's determinations of additional tax and penalties are presumed correct and the burden is on the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) His constitutional arguments are of no effect in this forum;, since Article III, section 3.5 of the California Constitution, as well as established policy of this board, bar us from ruling on constitutional questions raised in appeals involving deficiency assessments. (Appeal of Leon C. Harwood, Cal. St. Bd. of Equal., Dec. 5, 1978; Appeal of William F. and Dorothy M. Johnson, Cal. St. Bd. of Equal., Oct. 6, 1976.) Finally, we find the other issues he has raised to be frivolous: most of them were disposed of in the Appeals of Fred R. Dauberger,' et al., decided by this board on March 31, 1982. Since appellant has provided no new facts which would refute respondent's determination of his income tax liability, we must sustain respondent's action.

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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 Thomas J. Theis against a proposed assessment of additional personal income tax and a penalty in the total amount of $2,559.00 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of December, 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