



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DAVE WARKENTIN)

Appearances:

For Appellant: Dave Warkentin,
in pro. per.

For Respondent: Terry L. Collins
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 Dave Warkentin against a proposed assessment of additional personal income tax and penalties in the total amount of \$2,968.25 for the year 1979.

Appeal of Dave Warkentin

The issue presented by **this** appeal is whether appellant has **shown** respondent's proposed assessment of tax and penalties to be in error.

Appellant did not file a California personal income tax **return** for 1979. When he failed to comply **with** respondent's demand that he file a **return**, the subject proposed assessment was issued. Respondent utilized information from **the** Employment Development **Department in** determining appellant's income. Respondent also assessed penalties for failure to file (Rev. & Tax. Code, **§ 18681**), failure to file **on** notice and demand (Rev. & Tax. Code, **§ 18683**), and negligence (Rev. & Tax. Code, **§ 18684**); Appellant protested, but did not file a valid return. The proposed assessment was then affirmed, and this appeal followed.

Respondent's determinations of additional tax, **including** the **penalties** involved here, are presumptively correct, and the appellant bears the burden of showing that they are erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Marvin L. and Betty J. Robey, Cal. St. Bd. of Equal., Jan. 9, 1979.) After **reviewing** the record on appeal we can only conclude that appellant has not met this burden.

Appellant takes the position that he **is** neither constitutionally nor statutorily subject to the California personal **income** tax. We are precluded, however, by section 3.5 of article III of the California Constitution from determining **that** the statutes involved are unconstitutional or unenforceable, and it has been our consistent policy to decline to decide constitutional issues in appeals **involving** deficiency assessments. In any event, we note that the arguments raised by appellant have been ruled on by the courts and found to be meritless. (See Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.) For these reasons, we must sustain respondent's actions in **this** matter.

