



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
THOMAS L. FERNANDEZ)

For Appellant: Thomas L. Fernandez,
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 Thomas L. Fernandez against a proposed assessment of personal income tax and penalties in the total amount of \$483 for the year 1979.

Appeal of Thomas L. Fernandez

The issue for determination is whether appellant has established any error in respondent's assessment.

Respondent received information indicating that appellant was required to file a California personal income tax return for 1979. Since it had no record of such a return being filed, respondent demanded that appellant file the required return. When appellant did not file a return, a proposed assessment was issued based on wage information that respondent received from the Employment Development Department. The proposed assessment included penalties for failure to file a return and failure to file a return after notice and demand. (Rev. & Tax. Code, §§ 18681 & 18683.)

It is well settled that respondent's determinations of tax and the penalties involved in this appeal are presumed correct, and the burden is upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App. 2d 509 [201 P.2d 414] (1949); Appeals of Steven T. Burns, et al., Cal. St. Bd. of Equal., Sept. 21, 1982; Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.)

Appellant contends that he is not a taxpayer and does not owe any tax. However, he has not provided any evidence showing that the deficiency and penalties assessed by respondent are erroneous. Furthermore, the courts and this board have consistently rejected these arguments as frivolous. (See Appeals of Fred R. Dauberger, et al., supra, and the cases cited therein.) We see no reason to deviate from those decisions. Accordingly, respondent's action in this matter will be sustained.

Appeal of Thomas L. Fernandez

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 Thomas L. Fernandez against a proposed assessment of personal income tax and penalties in the total amount of \$483 for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day Of August , 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. **Collis**, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. **Bennett**, Chairman
Conway H. Collis, Member
Ernest J. Dronenburg, Jr., Member
Richard Nevins, Member
Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9