



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MYRTLE T. PETERSON)

For Appellant: Myrtle T. Peterson, in pro. per.
For Respondent: Bruce W. Walker
Chief Counsel
James C. Stewart
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Myrtle T. Peterson against proposed assessments of additional personal income tax and penalties in the total amounts of \$592.50 and \$1,625.00 for the years 1973 and 1974, respectively.

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Appellant, a California resident, filed personal income tax Form 540's for the years 1973 and 1974. The 1973 form mailed to respondent was blank, **except for appellant's** signature, her name and address, a reported adjusted gross income of \$1.00, and notations that appellant was single and was a widow over 65. The figure \$50.00 was also shown on Line 33, indicating tax liability of that sum. A \$50.00 payment was sent with the form. A note was also attached, however, in which appellant stated:

"I am entitled to full refund, but until I file for it, herewith \$50.00, just to be on the safe side."

The 1974 filed tax Form-540 merely contained appellant's signature, her name and address, and a reported adjusted gross income of \$1.00. Enclosed with the return was a \$100.00 payment.

Respondent wrote to appellant in April of 1975, advising her that an incomplete return form had been received for the year 1973 and that it did not constitute a proper return. Respondent requested that appellant file a proper return within 30 days. Appellant was also advised that in the absence of the receipt of adequate information by respondent, an assessment would be issued on the basis of existing information, and that the assessment would include a 25 percent penalty for failure to furnish the requested material. A similar letter was sent in July of 1975 by respondent concerning the 1974 tax year.

She did not reply to either letter. Respondent then estimated that appellant had taxable incomes of \$14,000 and \$20,000 for the years 1973 and 1974, respectively. It then computed the resulting tax liability, and issued notices of proposed assessments, in October and December of 1975 for the years 1973 and 1974, respectively. Included in each proposed assessment was a 25 percent penalty for failure to reply to respondent's request for specific information. At the time respondent made the estimates, the information available to respondent concerning appellant's taxable income was minimal. 1/

1/ Appellant filed a completed return for the year 1971 showing tax liability of \$18.00. The return form filed for the year 1972 was incomplete. "Estimated tax" of \$60.00 was enclosed and it was noted that "more time is needed to complete forms."

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She protested the proposed assessment for the year 1973 by again filing a return form completely devoid of any financial information except for showing income of "not over \$5.00," with a notation that "this figure is expressed in constitutional dollars of silver and/or gold." In the enclosed comments she raised several constitutional objections. She also returned her copy of respondent's notice of proposed assessment **for** the year 1973 with the comment that the income determined was "totally inaccurate as you well know, naturally unsigned." At the same time, a similar incomplete return form for the year 1974 was sent to respondent, showing income as "not over \$7.00." She also subsequently protested the proposed assessment for the year 1974 when issued in December of 1975.

When appellant thereafter provided no new financial information after again being requested to do so, the protests were denied, and this appeal followed.

In essence, appellant contends that because of the alleged illegality of Federal Reserve notes, she did not receive sufficient lawful money in 1973 and 1974 to have incurred any tax liability. She raises numerous constitutional objections to respondent's proposed assessments. She also claims that in any event, respondent's estimate of taxable income was totally inaccurate.

This board has a well established policy of abstention from deciding constitutional questions in appeals involving deficiency assessments. (Appeal of Iris E. Clark, Cal. St. Bd. of Equal., March 8, 1976; Appeal of James S. and Marian Forkner, Cal. St. Bd. of Equal., Aug. 7, 1963; Appeal of Humphreys Finance Co., Inc., Cal. St. Ad. of Equal., June 20, 1960.) This policy is based upon the absence of specific statutory authority which would allow the Franchise Tax Board to obtain judicial review of an adverse decision in a case of this type, and our belief that such review should be available for questions of constitutional importance. (Appeal of C. Pardee Erdman, Cal. St. Bd. of Equal., Feb. 18, 1970.)

We also note, however, that several federal courts have dismissed, as spurious, similar constitutional arguments. (Hartman v. Switzer, 376 F. Supp. 486 (W.D. Pa. 1974); United States v. Porth, 426 F.2d 519 (10th Cir. 1970), cert. den., 400 U.S. 824 [27 L. Ed. 2d 531 (1970)]; Gladwin C. Lamb, 1173,071 P-H Memo. T.C. (1973).) The cases point out that, as long ago as 1871, the Supreme

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Court upheld Congress' power to issue paper currency as legal tender. (Knox v. Lee, 12 Wall. 457 [20 L. Ed. 2871 (1871).]) Consistent **with the** federal decisions, we agree with respondent's determination that appellant's earnings were taxable. (See Appeal of Donald H. Lichtle, Cal. St. Bd. of Equal., Oct. 6, 1976.)

We are also unable to conclude that respondent's computation of the amount of taxable income for the years 1973 and 1974 must be revised. Here, appellant's failure to provide any pertinent information compelled respondent to make estimated proposed assessments, and leaves us -without any basis of making what appellant might consider as more reasonable approximations. (Rev. & Tax. Code, § 18648; see Appeal of John and Codelle Perez, Cal. St. Bd. of Equal., Feb. 16, 1971; Appeal of Walter L. Johnson, Cal. St. Bd. of Equal., **Sept. 17, 1973**; see also Charles H. Hyslope, 21 T.C. 131 (1953).) 2/

With respect to the 25 percent penalty imposed by respondent, section 18683 of the Revenue and Taxation Code provides that:

"If any taxpayer fails or refuses to furnish any information requested in writing by the Franchise Tax Board or fails or refuses to make and file a return required by this part **upon notice and demand by the Franchise Tax Board, then, unless the failure is due to reasonable cause and not willful neglect, the Franchise Tax Board may add a penalty of 25 percent of the amount of tax determined pursuant to Section 18648 or of any deficiency tax assessed by the Franchise Tax Board concerning the assessment of which the information or return was required.**"

It is well established that the taxpayer has the burden of showing such a penalty is improper. (Appeal of Thomas T. Crittenden, Cal. St. Bd. of Equal., **Oct. 7, 1974**; Appeal of Dare and Patricia Miller, Cal. St. Bd. Of

2/ If the estimates are inaccurate, appellant can still **obtain** relief by filing a valid return with respondent, disclosing her actual income, and the necessary supporting information.

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Equal., March 18, 1975.) Appellant has offered no explanation of her failure to supply the requested information. Thus, the penalty was properly imposed.

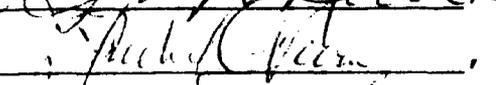
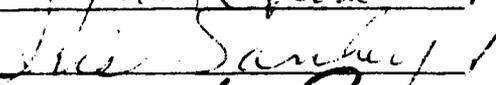
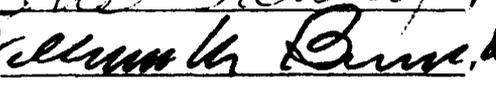
For the foregoing reasons, respondent's action must be sustained.

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 Myrtle T. Peterson against proposed assessments of additional personal income tax in the amounts of \$592.50 and \$1,625.00 for the years 1973 and 1974, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of April, 1978, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
_____, Member