



BEFORE THE STATE BOARD OF 'EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
DONALD MC KAY CRANE)

Appearances:

For Appellant: Donald McKay Crane,
in pro. per.
For Respondent: Jean Harrison Ograd
Counsel

O P I N I O N

These appeals are made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Donald McKay Crane for refund of a penalty for late payment of tax in the amount of \$29.64 for the year 1971, and for refund of personal income tax and penalties in the total amounts of **\$2,576.85** and **\$1,711.18** for the years 1972 and 1973, respectively, and pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Donald McKay Crane against a proposed assessment of additional personal income tax and penalty in the total amount of **\$2,654.18** for the year 1974.

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The question for decision is whether appellant had taxable income in the amounts determined by respondent for each year on appeal.

Appellant resides in Fountain Valley, California. On May 2, 1972, he filed his 1971 California personal **income tax** return, reporting adjusted gross income of **\$24,479.32** and remitting the appropriate amount of tax. Since **appellant's 1971** return was filed and the tax paid after the due date (April 15, **1972**), respondent assessed a five percent underpayment penalty, pursuant to section 18684.2 of the Revenue and Taxation Code. Subsequently appellant filed an amended return for 1971, declaring that in that year he had no adjusted gross income and no tax liability because he had earned no lawful money in 1971 and was not a taxpayer. Appellant filed similar "returns" for 1972, 1973 and 1974, and paid no tax for those years.

Information obtained from appellant's employer and other available sources revealed that appellant was employed during all of the years 1971 through 1973, and that he did have taxable income in each year. On the basis of that information, respondent issued its **proposed assessments** of additional personal income tax for 1972 and 1973, plus penalties for failure to file valid returns on time (Rev. & Tax. Code, § 18681) and, with respect to 1972, a penalty for failure to file a valid return after notice and demand (Rev. & Tax. Code, § 18683). In due course, all of those assessments became final.

Appellant made no voluntary payment of any of the amounts assessed. Consequently, between July 21, 1975, and September 30, 1975, respondent sent several notices to withhold (Rev. & Tax. Code, § 18817) to appellant's employer, K.R.K., Inc. (K.R.K.) in Downey, California. None of those notices were honored. On March 12, 1976, respondent examined **K.R.K.'s** books and ascertained that during July and August of 1975, K.R.K. had issued checks to appellant totalling **\$5,430.00**, in violation of the notices to withhold. Under section 18818 of the Revenue and Taxation Code, such failure to withhold an amount due from any taxpayer and to transmit it to respondent renders the employer liable for such amount.

Accordingly, on March 29, 1976, respondent wrote to K.R.K. demanding payment within five days of **\$4,697.12**, the total amount of tax, penalties, and interest due from appellant at that time. Respondent

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advised K.R.K. that if payment of the full amount would create financial hardship, K.R.K. could arrange to make installment payments. If K.R.K. failed to act, respondent stated, payment would be demanded of Union Bank, where the funds due on the order to withhold were being held. On that same date, respondent also sent a letter to appellant explaining the law regarding the proper filing of returns and the constitutionality of the monetary and tax systems. In addition, respondent gave notice to appellant that unless complete payment of the amounts due was received within five days, or some other arrangements made for partial payments, collection action would be taken.

No response to those letters was received, either from appellant or K.R.K. On April 8, 1976, respondent thuswrote to Union Bank demanding payment of \$4,697.12, the amount due on the order to withhold. The bank turned the funds over to respondent and K.R.K.'s account was charged accordingly. Appellant filed claims for refund of those funds, and respondent's denial of the claims gave rise to **the first** of these appeals.

In the return which he filed for 1974, **appellant** again indicated that he had zero income for the year because he had received no lawful money and he was not a taxpayer. On the basis of wage information supplied by appellant's employer to the California Employment Development Department, respondent issued a proposed assessment of additional tax and penalty against appellant for the year 1974. Appellant protested on the same grounds and, when respondent affirmed its assessment, appellant filed a second appeal with this board. The two appeals have been consolidated for purposes of this opinion.

Appellant challenges the constitutionality of income tax laws generally **and**, specifically, their applicability to him. He believes he has no obligation to file California personal income tax returns because he is not a **"taxpayer"**, as that term is used in the California Personal Income Tax **Law**. In this regard, he contends that he had no income during the years in question because he was paid in money not redeemable in gold or silver. He also argues that he is not properly subject to income taxation because a tax measured by income is an excise tax imposed on corporations exercising certain state--granted privileges, none of which have been granted to or exercised by

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appellant. He claims that he filed a return for 1971 out of ignorance of the law and that he had the right later to revoke that return, which he did when he filed an amended 1971 return showing no taxable income. Finally, appellant argues that since he does not come within the purview of the income tax laws, and since he had not acknowledged any tax debts, the funds obtained by respondent from Union Bank were unlawfully **seized.**^{1/}

On the basis of the record before us, we must first express some doubt as to whether appellant herein made any payment of the amounts in issue for 1971, 1972 and 1973 which would entitle him to file valid claims for refund for those years, since it appears that it was his employer, K.R.K., who ultimately became liable for and paid the assessments against appellant. Assuming, without deciding, that he did have standing to file **the** refund claims in question, we nevertheless believe that all of the arguments he offers in support of those claims are without merit. Most of his contentions are familiar to us, and we have rejected them as frivolous on numerous **occasions** in the past. (See, e.g., Appeal of Helmut F. and Gisela H. Froeber, Cal. St. Bd. of Equal., Sept. 25, 1979, Appeal of Armen B. Condo, Cal. St. Bd. of Equal., July 26, 1977; Appeal of Donald H. Lichtle, Cal. St. Bd. of Equal., **Oct. 6, 1976**.) We also find appellant's argument concerning the illegality of respondent's "seizure" of the funds from Union Bank to be without merit.

With respect to appellant's constitutional arguments, we believe that the adoption of Proposition 5 by the voters on June 6, 1978, adding section 3.5 to Article III of the California Constitution, precludes any determination by this board that the statutory provisions involved are unconstitutional or unenforceable. It is noteworthy, however, that in appropriate federal cases **where** these constitutional issues have been considered on the merits, they have been

^{1/} Appellant also complains that he was never given credit for \$592.89 of state income tax which was withheld from his salary during 1972. Respondent informs us it has no evidence that any such amount of tax was withheld, but it has advised appellant that he will be given credit if he comes forth with any documentary proof of the alleged withholding for 1972. To date, appellant has not tendered any such proof.

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consistently rejected. (See, e.g., United States v. Sullivan, 274 U.S. 259 [71 L. Ed. 10371 (1927)]; United States v. Daly, 481 F.2d 28, 30 (8th Cir.), cert. den., 414 U.S. 1064 [38 L. Ed. 2d 4691 (1973)]; Hartman v. Switzer, 376 F. Supp. 486 (W.D. Pa. 1974); Lou M. Hatfield, 68 T.C. 895 (1977).)

During the years in question, appellant was a resident of California who was subject to the personal income tax imposed by this state. (Rev. & Tax. Code, § 17041.) It appears that all of the penalties were properly imposed under the various penalty provisions contained in the California Personal Income Tax Law. (See Appeal of Richard E. Krey, Cal. St. Bd. of Equal., Feb. 3, 1977, and authorities cited therein.) Since appellant has failed to establish any error in respondent's determination of his personal income tax liability for the years in question, or in the penalties imposed against him, we conclude that respondent's action in this matter **must be** sustained.

ORDER

Pursuant to the views expressed in the Opinion of the board on file in this proceeding, and good cause appearing therefor,

