

Appeal of Ronald Ippolito

The sole issue for determination is whether appellant has shown that respondent's proposed assessment is erroneous.

Respondent received information from the State Department of Employment Development showing that during 1977 appellant had received wages in the amount of **\$20,752.00**. Respondent searched its files and discovered that appellant had failed to file a California personal income tax return for that year. Respondent issued appellant a **notice and demand** to file a return, but appellant did not comply. Therefore, respondent computed appellant's taxable income on the basis of the aforementioned information, and issued a deficiency assessment for the appropriate tax due. The assessment included penalties **levied pursuant** to sections 18681(a), 18683 and 18684 of the Revenue and Taxation Code.

It is well settled that respondent's determinations of tax and penalties for failure to file a return are presumptively correct, and that **the taxpayer** bears the burden of proving them erroneous. (Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., **April 6, 1977**; Appeal of Sarkis N. Shmavonian, Cal. St. Bd. of Equal., **April 6, 1977**; Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., **Feb. 3, 1977**; Appeal of Myron E. and Alice Z. Gire, Sept. 10, 1969.)

Appellant's sole argument in 'this appeal is that subjecting him to California personal income tax liability for the year in question violates his constitutional rights. As we have stated in prior instances, it is our well established policy to abstain from deciding constitutional questions in appeals involving deficiency assessments.. (Appeal of William A. Hanks, Cal. St. Bd. of Equal., **April 6, 1977**; Appeal of Iris E. Clark, Cal. St. Bd. of Equal., **March 8, 1976**.)^{1/} Accordingly, we must sustain respondent's action with respect to the proposed assessment.

^{1/} We do note, however, that the power of the State Legislature to levy personal income taxes is inherent and requires no special constitutional grant. (Tetreault v. Franchise Tax Board, 255 Cal.App.2d 277, 280 [63 Cal.Rptr. 326] (1967); Hetzel v. Franchise Tax Board, 161 Cal.App.2d 224, 228 [326 P.2d 611] (1958).)

