82-SBE-309

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GLORIA JACQUES)

Appearances:

For Appellants: Gloria Jacques, in pro. per.

For Respondent: Allen R. Wildermuth Counsel

OPINION

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 Gloria Jacques against proposed assessments of additional personal income tax and penalties in the total amounts of $24,419.63 and $29,282.37 for the years 1978 and 1979, respectively.

Appeal of Gloria Jacques

At issue is whether appellant Gloria Jacques has established error in respondent's proposed assessments of tax and penalties for 1978 and 1979.

For the years at issue, appellant filed California personal income tax returns disclosing no information about her income, deductions, or credits. Appellant entered the words "object: self-incrimination" in the places provided for that information on the return forms. Respondent notified appellant that the returns were not valid and demanded that she file returns containing the necessary information. When appellant failed to file the demanded returns, respondent issued notices of proposed assessments of tax, which respondent estimated by using the income reported on appellant's 1977 return plus a 15 percent growth and inflation factor for each subsequent year at issue. Respondent included penalties for failure to file a return (Rev. & Tax. Code, § 18681), for failure to file a return after notice and demand (Rev. & Tax. Code, § 18683), for negligence (Rev. & Tax. Code, § 18684) and for failure to pay the estimated tax (Rev. & Tax. Code, § 18685.05). This appeal followed in due course.

Appellant argues that respondent invalidly estimated her tax liability for the years at issue when it based its estimates on prior year's reports of her income from dry cleaning shops. She argues also that penalties assessed because she provided no information on her returns constitute improper penalization of her assertion of her constitutional privilege against self-incrimination.

It is settled law that respondent's determinations of tax and penalties, other than the fraud penalty, are presumptively correct, and the burden rests upon the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Although appellant has attacked respondent's method of estimating her income, appellant has not proven that the amounts of her income estimated by respondent for the years in question were incorrect. Furthermore, where the taxpayer refuses to cooperate in the ascertaining of his or her income, respondent has great latitude in determining the amount of tax liability, and may use reasonable estimates to establish the taxpayer's income. (See, e.g., Joseph F. Giddio, 54 T.C. 1530 (1970).

Appellant's argument is that the Fifth Amendment allows her to refuse to file a valid return because any information she might provide thereon could incriminate her

with respect to some undisclosed crime. We have consistently dismissed this tired claim as frivolous. (See, e.g., Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980.) She must be aware that the privilege against self-incrimination will not support a blanket failure to supply any income and expense information on a tax return form. (United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 469] (1973); Appeal of Ruben B. Salas, Cal. St. Bd. of Equal., Sept. 27, 1978.)

With respect to the penalties asssments, we have repeatedly sustained such assessments of taxpayers who have advanced similar "constitutional" bases for failing to file adequate returns. (See, e.g., Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., July 26, 1977; Appeal of Ronald W. Matheson, supra; Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.)

Respondent's assessments are sustained.

Appeal of Gloria Jacques

ORDER

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 Gloria Jacques against proposed assessments of additional personal income tax and penalties in the total amount of $24,419.63 and $29,282.37 for the years 1978 and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of July , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member

_____, Member