

Appeal of Wallace R. and Valerie K. Hice

The sole issue for determination is whether appellants have established any error in respondent's determination of personal income tax and penalties for 1978.

Appellants did not file California personal income tax returns for 1978 although required to do so. When respondent demanded that returns be filed, appellants failed to comply. Thereafter, respondent issued the assessments in question. The assessments were based on information received from the California Employment Development Department. Included in the proposed assessments were penalties for failure to file a return (Rev. & Tax. Code, § 18681) and failure to file a return after notice and demand (Rev. & Tax. Code, § 18683). Appellants protested, but refused to file a return. In due course the proposed assessments were affirmed, and this appeal followed.

It is well settled that respondent's determinations of additional tax and penalties are presumptively correct, and the burden of proving them erroneous is upon the taxpayer. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) **Appellants** have offered absolutely no evidence which would even suggest that respondent's determinations are erroneous. Instead, appellants have recited the worn list of statutory and constitutional objections to respondent's action. Without exception, these contentions have been rejected as frivolous in previous decisions of this board and the federal judiciary. (See, e.g., United States v. Whitesel, 543 F.2d 1176 (6th Cir. 1976); United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 4691 (1973)]; United States v. Porth, 426 F.2d 519 (10th Cir. 1970); Appeal of Arthur J. Porth, supra; Appeal of Armen B. Condo, Cal. St. Bd. of Equal., July 26, 1977.) We see no reason to depart from these decisions in this appeal.

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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 Wallace R. Hice against a proposed assessment of personal income tax and penalties in the total amount of \$2,935.50 for the year 1978, and that the action of the Franchise Tax Board on the protest of Valerie K. Crowl (aka Valerie K. Hice) against a proposed assessment of personal income tax and penalties in the total amount of \$325.50 for the year 1978, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of January , 1982, by the State Board of Equalization, with Board Members Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

_____, Chairman
George R. Reilly _____, Member
Ernest J. Dronenburg, Jr. _____, Member
Richard Nevins _____, Member
_____, Member