

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MICHAEL MENDELLE)

Appearances:

For Appellant: A. J. Porth
For Respondent: John R. Akin and
Jon Jensen
Counsel

O P I N I O N

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 Michael Mendelle against a proposed assessment of personal income tax and penalties in the total amount of \$4,443.40 for the year 1978.

Appeal of Michael Mendelle

The sole issue for determination is whether appellant has established any error in respondent's proposed assessment of personal income tax and penalties for 1978.

Appellant did not file a California personal income tax return for 1978 although required to do so. When respondent demanded that a return be filed, appellant failed to comply. Thereafter, respondent issued the notice of proposed assessment in issue. The assessment was based upon information reported on **appellant's** 1977 return factored for inflation. The proposed assessment included penalties for failure to file a return (Rev. & Tax. Code, § 18681); failure to file upon notice and demand (Rev. & Tax. Code, § 18683); failure to pay estimated tax (Rev. & Tax. Code, § 18685.05); and negligence (Rev. & Tax. Code, § 18684). Appellant protested, but refused to file a return. In due course the proposed assessment was affirmed, and this appeal followed.

It is well settled that respondent's determinations of additional tax, including the penalties involved in this appeal, are presumptively correct, and that the burden of proving them erroneous is upon the taxpayer. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) Furthermore, where the taxpayer files no return or otherwise refuses to cooperate in the ascertainment of his 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); Norman Thomas, ¶ 80,359 P-H Memo. T.C. (1980); Floyd Douglas, ¶ 80,066 P-H Memo. T.C. (1980); George Lee Kindred, ¶ 79,457 P-H Memo. T.C. (1979).)

In support of his position, appellant has recited the familiar list of statutory and constitutional objections to respondent's action. Without exception, these contentions have been rejected as frivolous in previous decisions of the federal judiciary and this board. (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. 1044 [38 L.Ed.2d 469] (1973); United States v. Porth, 426 F.2d 519 (10th Cir. 1970); Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979; 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.

Appeal of Michael Mendelle

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 Michael Mendelle against a proposed assessment of personal income tax and penalties in the total amount of \$4,443.40 for the year 197.8, 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 'Jevins _____, Member
_____, Member