

Appeal of David M. Albrecht

After receiving information from the California Employment Development Department that appellant had been paid \$23,340 in 1976, respondent advised appellant that its records failed to show that he had filed a personal income tax return for that year and demanded that he file. When appellant did not reply, respondent issued a notice of proposed tax assessment, which included a 25 percent penalty for failure to file a return, plus a 25 percent penalty for failure to file a return after notice and demand.

Respondent's determination of tax and penalties due is presumptively correct, and the taxpayer has the burden of proving that it is wrong. (See Appeal of Richard L. Starnes, Cal. St. Bd. of Equal., Jan. 6, 1981; Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) In this case, appellant admits that he received the amount recorded by the Employment Development Department, but denies that he thereby incurred any liability for income taxes. In particular, he denies that receipt of Federal Reserve notes can constitute reportable or taxable income, denies that wages paid in any form can constitute reportable or taxable income, and denies that the Franchise Tax Board has the jurisdiction to levy income taxes, which he contends are unapportioned direct taxes prohibited by the Constitution of the United States.

The first two objections advanced by this appellant have been advanced before by other appellants, and we have examined and disposed of them in our previously published opinions. A simple restatement of our conclusions will now suffice: The receipt of Federal Reserve notes can constitute **reportable** and taxable income. (Appeal of Iris E. Clark, Cal. St. Bd. of Equal., March 8, 1976; Appeal of Donald H. Lichtie, Cal. St. Bd. of Equal., Oct. 6, 1976.) The receipt of wages paid by an employer to an employee as compensation for the employee's services constitutes gross **income reportable** and taxable under both state and federal income tax laws. (Appeal of Francis J. Pearson, Cal. St. Bd. of Equal., May 19, 1981; Katherine F. Miller, 39 T.C. 505 (1962).)

Appellant's third contention refers to the restriction contained in article I, section 9, of the Constitution of the United States, which restricts the congressional taxing power by requiring that no **capitation**, or other direct tax shall be laid, unless in **proportion** to the census or enumeration. That restriction

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was later relaxed by the 16th Amendment, which permitted the Congress to tax incomes without regard to any census or enumeration. Thus, any unapportioned tax imposed by Congress cannot exceed the grant of power to Congress contained in the 16th Amendment. Appellant's contention overlooks the fact that article I, section 9, is simply a limited grant of taxing power to the **Congress** of the United States; that section is neither a grant of nor a restriction on the taxing power of the states. The power of a state legislature to levy taxes is inherent and requires no special constitutional grant. (Hetzel v. Franchise Tax Board, 151 Cal.App.2d 224 [326 P.2d 611] (1958).) Article XIII, section 26(a), of California's Constitution, which provides that taxes on or measured by income may be imposed on persons, corporations, or other entities as prescribed by law, expressly sets forth the power of California's Legislature to levy income taxes.

Based upon the above considerations, respondent's action must be sustained.

