

Appeals of James Allen, et al.

<u>Appellant</u>	<u>Year</u>	<u>Proposed Tax</u>	<u>Assessment Penalties</u>
James Allen	1978	\$ 216.00	\$ 133.00
	1979	1,750.00	962.50
W. Bychek	1978	476.72	218.35
	1979	1,420.00	781.00
Grant Carlson	1979	2,190.00	1,204.50
F. Coultas, Jr.	1978	1,085.13	596.82
	1979	1,464.00	805.20
Stephen & Helen Fairchild	1977	2,137.78	1,173.82
	1978	10,710.99	6,419.62
Charles J. & Patricia A. Goldmann	1978	489.62	146.97
Wallace R. Hice	1979	3,048.00	1,676.40
John M. Kennedy	1978	608.00	304.00
	1979	1,585.00	871.75
Barry T. Koerner	1979	1,035.00	569.25
Paul A. Langelier	1979	1,651.00	908.05
Edwin Normandy	1979	1,651.00	775.58
Ira D. Pilkington	1978	1,513.54	910.85
Edward Rio, Jr.	1978	2,433.00	1,216.50
	1978	668.64	334.32
Joe D. Schmidt	1977	761.00	380.50
	1978	623.00	336.33
Jean L. Sorenson	1979	328.00	180.40
Robert P. Stephens	1978	365.00	224.02
Joseph F. Ulawski	1978	190.00	95.00
	1979	1,225.00	770.24

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

Appellants did not file California personal income tax returns for the appeal years although required to do so. When respondent demanded that returns be filed for those years,, appellants failed to comply. Thereafter, respondent issued the notices of proposed assessment which are in issue. The assessments were based upon information obtained from the California Employment Development Department or other sources. The proposed assessments included various penalties, including those for failure to file a return (Rev. & Tax. Code, § 18681) and for failure to file upon notice and demand (Rev. & Tax. Code, § 18683). Appellants protested, but refused to file returns. In due course, the proposed assessments were affirmed, and these appeals followed.

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It is well settled that respondent's determinations of additional tax, including the penalties involved in these appeals, are **presumptively correct**, and the burden is upon the taxpayers to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Donald W. Cook, Cal. St. Bd. of Equal., May 21, 1980; 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.) The familiar contention that appellants are not subject to the Personal Income Tax Law or required to file valid returns because of certain constitutional guarantees is of no avail to the taxpayers in sustaining that burden. (See Appeal of Marvin L. and Betty J. Robey, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Ruben B. Salas, Cal. St. Bd. of Equal., Sept. 27, 1978; Appeal of Arthur J. Porth, supra.) Even if that were not the case, we believe that section 3.5 of article III of the California Constitution precludes our determining that the statutory provisions involved are unconstitutional or unenforceable. For the record, all of the issues raised herein have been reviewed in greater detail in our opinion in the Appeal of Fred R. Dauberger, et al. decided on this day.

Appellants' representative has cited the decision of the Supreme Court of Alaska on November 20, 1981 in the case of State of Alaska, Department of Revenue v. Oliver, 636 P.2d 1156, for the proposition that an individual does not have to complete an income tax return or supply tax information. The Oliver case, however, clearly does not support that proposition. The case involved the refusal by individual taxpayers, on the basis of constitutional privilege, to provide any information on their state income tax return regarding the amount or source of income, and then subsequently refusing to comply with an administrative summons ordering them to appear and testify regarding their tax liability and to produce records in order to allow a determination of their liability. The Supreme Court of Alaska concluded that the superior court was authorized to order a taxpayer incarcerated for civil contempt for refusing to comply with the summons; that no privacy rights would be violated by the filing of a valid income tax return; and that the taxpayers did not establish the privilege against self-incrimination which would justify their failure to answer questions on the return or to produce the required documents.

In view of the record before us, respondent's determination of additional tax and penalties must be sustained.

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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 protests of the previously listed appellants against proposed assessments of personal income tax and penalties in the amounts and for the years set forth in the opinion, be and the same are hereby sustained.

Done at Sacramento, California, this 31st day of March , 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' C---i-----, Member
_____, Member