

Appeal of Richard R. Ziser

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

For 1977 appellant filed a California personal income tax Form 540 disclosing no information concerning his income, deductions or credits. The spaces provided for such information were filled in with asterisks. According to a note on the face of the return, the asterisks meant that appellant specifically objected to providing such information under the Fifth Amendment to the United States Constitution.

Respondent notified appellant that the Form 540 was not a valid return and demanded that appellant file a return containing the required information. Appellant did not file the requested return. Thereafter, in the absence of a self-assessed tax liability, respondent estimated appellant's 1977 income at \$12,500, based upon sales tax paid by appellant while doing business as Ziser Manufacturing Company, and a notice of proposed assessment was issued. Respondent also imposed a 25 percent penalty for failure to file a return (Rev. & Tax. Code, § 18681); a 25 percent penalty for failure to file a return after notice and demand (Rev. & Tax. Code, § 18683); a 5 percent negligence penalty (Rev. & Tax. Code, § 18684), and a penalty for failure to pay estimated tax (Rev. & Tax. Code, § 18685.05). Appellant protested, but refused to file a return. In due course, respondent affirmed its assessment and this appeal followed.

It is settled law that respondent's determinations of additional tax, including the penalties involved in this appeal, are presumptively correct, and the burden is 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.) The now-too-familiar general contentions that the income tax on individuals is unconstitutional or that to provide the financial information requested on the Form 540 would or could violate his constitutional rights is of no avail to the taxpayer in sustaining that burden. (See Appeal of Marvin L. and Betty J. Robey, Cal. St. Bd. of Equal., Jam. 9, 1979; Appeal of Ruben B. Salas, Cal. St. Bd. of Equal., Sept. 27, 1978.) Even if that were not the case, we believe the addition of section 3.5 to Article III of the California Constitution precludes our determining that the statutory provisions involved are

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unconstitutional or unenforceable. Accordingly, respondent's determination of additional tax due from appellant for 1977 must be sustained.

With respect to the penalties, we point out that in cases of this type we have consistently upheld penalty assessments such as those issued against appellant in this appeal. (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.) On the basis of this record, we conclude that penalties for failure to file a return, failure to file after notice and demand, negligence, and failure to pay estimated tax were fully justified in this case as well. Respondent's action in this matter will, therefore, 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 protest of Richard R. Ziser against a proposed assessment of additional personal income tax and penalty in the total amount of \$710.04 for the year 1977, be and the same is 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, Member
_____, Member