



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HELMUT F. FROEBER)

For Appellant: Helmut F. Froeber,
in pro. per.

For Respondent: James T. Philbin
Supervising 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 Helmut F. Froeber against a proposed assessment of personal income tax in the amount of \$4,412.74 for the year 1978.

Appeal of Helmut F. Froeber

For the 1978 taxable year, appellant filed a form 540 on which asterisks were inserted in the spaces for gross, adjusted gross, and taxable income and tax liability. Respondent issued a notice of proposed assessment based on information received from appellant's employer and the disallowance of a claimed deduction for legal expenses. Appellant's protest of the assessment was denied, and this timely appeal followed.

Appellant contends that he properly claimed his Fifth Amendment privilege against self-incrimination on his form 540 and that he cannot be compelled to provide income information absent a grant of immunity. In addition, he states that wages or salaries are not "income" and that he is a "private individual," not statutorily subject to an income tax..

It is appellant's burden to prove that respondent's determinations are 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.) No evidence which might sustain that burden has been presented.

The constitutional and statutory arguments made by appellant are substantially the same as those considered and rejected recently in the Appeals of Fred R. Dauberger, et al., decided on March 31, 1982. They have been similarly rejected as without merit in numerous other appeals, including two previous appeals; by this same appellant. (Appeal of Helmut F. Froeber, Cal. St. Bd. of Equal., June 29, 1982 (taxable years 1976 and 1977); Appeal of Helmut F. and Gisela El. Froeber, Cal. St. Bd. of Equal., Sept. 25, 1979 (taxable year 1975).) The present appeal is no less frivolous than the previous ones and, therefore, we sustain respondent's action.

Appellant's repeated appeals in the face of uniform rejection of his arguments convince us that he has instituted this proceeding merely for the purpose of delay. Unmeritorious appeals instituted merely for delay cannot be tolerated and Revenue and Taxation Code section 19414 empowers us to impose a penalty in such cases. (See Appeals of Robert R. Aboltin, Jr., et al., Cal. St. Bd. of Equal., June 29, 1982; Appeals of Fred R. Dauberger, et al., supra.) We therefore impose against appellant a penalty in the amount of \$500 as provided in section 19414.

Anneal of Helmut F. Froeber

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 Helmut F. Froeber against a proposed assessment of personal income tax in the amount of \$4,412.74 for the year 1978, be and the same is hereby sustained, and that the \$500 delay penalty under section 19414 be imposed against Helmut F. Froeber and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, this 21st day of September, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett , Chairman
Conway H. Collis , Member
Ernest J. Dronenburg, Jr. , Member
Richard Nevins , Member
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