



Appeal of J. Bradley Oakes

For the year 1979, appellant submitted a California personal income tax form 540 that contained no information regarding his income or deductions. Instead, he put either "n/a" or "object" on almost every line and attached a statement asserting his privilege against self-incrimination. When he failed to act on respondent's demand that a valid return be filed, the subject assessment was issued, based on income information received from the Employment Development Department. Penalties were also imposed for failure to file, failure to file after notice and demand, and negligence.

Appellant contends that his Fifth Amendment privilege against self-incrimination has been properly asserted and he cannot be required to provide information about his income or deductions absent a grant of immunity. He also contends that respondent is "guessing" as to the amount of his income and that the penalties were imposed "in an attempt to abridge [his] right against self incrimination."

Whether or not appellant's Fifth Amendment claim was properly asserted, we believe that section 3.5 of article III of the California Constitution precludes us from determining that the statutory provisions involved are unconstitutional or unenforceable. Furthermore, this board has a well-established policy of abstaining from deciding constitutional questions in appeals involving deficiency assessments. (Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.) However, we note that blanket declarations of the Fifth Amendment privilege do not constitute valid assertions thereof, and do not excuse the failure to file a valid return. (Appeals of Fred R. Dauberger, et al., supra.)

Appellant's other contentions are groundless. Respondent did not "guess" about appellant's income; it used appropriate, reliable information which has not been controverted by appellant. The penalties imposed are prescribed by statute and there has been no showing that they were improperly imposed.

For the reasons stated, respondent's action must be sustained.

