



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CHARLES W. HUTCHINS)

For Appellant: Charles-W. Hutchins,
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 Charles W. **Hutchins** against a proposed assessment of personal **income tax** and **penalties** in the total amount of **\$1,547.76** for the year 1979.

Appeal of Charles W. Hutchins

Appellant failed to file a 1979 California personal income tax return. After **receiving** information **indicating** that appellant was required to file a return for that year, **respondent** demanded that he file. Appellant did not respond to the demand; therefore, respondent issued a proposed assessment based upon information received from the California Employment Development Department. **It** also imposed penalties for failure to file a return, failure to file after notice and demand, negligence, and failure to pay estimated tax. (**Rev. & Tax. Code, §§ 18681, 18683, 18684, and 18685.05.**) Respondent **affirmed** the proposed assessment after appellant's protest, and this **timely** appeal followed.

Appellant contends that the Fifth **Amendment** privilege excuses his failure to file a return and, thus, that the proposed assessment is unconstitutional. This board is prevented from deciding this issue by our policy of abstention from deciding **constitutional** issues: in appeals **involving deficiency assessments.** (Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.) Were we not so constrained, however, we would **have** no difficulty in **concluding that** appellant's argument is meritless. The Fifth Amendment privilege does not encompass the total refusal to file an income tax return or to provide financial information. (See, e.g., United States v. Sullivan, 274 U.S. 259 [71 L.Ed. 1037] (1927); United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 469] (1973).)

Appellant also contends that: his **income** was lower,, and his deductible expenses greater,, than determined by respondent. However, he has not provided any evidence to support these contentions. The burden of proving any error in respondent's determination of tax and penalties is on the taxpayer. (Appeal of Ralph E. Lattimer, Cal. St. Bd. of Equal., Jan. 5, 1982; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Since **appellant** has not met this burden, respondent's **action** must be sustained.

