

Appaal of Daniel F. Meier

Appellant failed to file a 1978 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. When appellant did not file a return after this demand, respondent issued a proposed assessment based upon information received from **the** California Employment Development Department. In addition, it 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.) Appellant **protest-**ed the proposed assessment which was then affirmed by respondent. This timely appeal followed.

Respondent's determinations of tax and penalties are presumed to be correct, and it is the taxpayer's burden to prove any error. (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.) Appellant has produced no evidence to show that the respondent made any error. Rather, appellant contends that his **refusai** to provide any information regarding his income is protected by the Fifth Amendment because he is under criminal investigation by the Internal Revenue Service. This board has a long-standing 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 without merit. It is well settled that the Fifth Amendment privilege does not justify a complete refusal to file income **tax** returns.' (E.g., United States v. Daly, 481 **F.2d** '28 (8th Cir.), cert. den.; 414 U.S. 1064 [**38 L.Ed.2d 469**] (1973); United States v. Sullivan, 274 U.S. 259 [**71 L.Ed. 1037**] (1927).)

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

