

Appeal of Greg Pettit

The sole issue presented by this appeal is whether appellant has established error in respondent's proposed assessment of additional personal income tax or in the penalties assessed for the year in issue.

Respondent received information indicating that appellant was required to file a California income tax return for 1979. Respondent so advised appellant, and demanded that he file the required return; appellant did not respond to that demand. Thereafter, respondent issued a notice of proposed assessment based upon appellant's Wage and Tax Statement for 1979. The proposed assessment also included penalties for failure to file a return, failure to file upon notice and demand, failure to pay estimated income tax, and negligence. After due consideration of appellant's protest, respondent affirmed the proposed assessment, thereby resulting in this appeal.

It is well settled that respondent's determinations of tax are presumptively correct, and appellant bears the burden of proving them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case. (Appeal of K. L. Durham, supra; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) No such proof has been presented here.

In support of his position; appellant has advanced the contention that his Fifth Amendment privilege against self-incrimination excuses his failure to file a return for the year in issue; We find that argument to be without merit: The privilege against self-incrimination does not constitute an excuse for a total failure to file a return. (United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 469] (1973).) Moreover, a blanket declaration of that privilege does not even constitute a valid assertion thereof. (United States v. Jordan, 508 F.2d 750 (7th Cir.) cert. den., 423 U.S. 842 [46 L.Ed.2d 62], reh. den., 423 U.S. 991 [46 L.Ed.2d 311] (1975).)

On the basis of the evidence before us, we can only conclude that respondent correctly computed appellant's tax liability, and that the imposition of penalties was fully justified. 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 Greg Pettit against a proposed assessment of additional personal income tax and penalties in the total amount of **\$1,344.25** for the year 1979, be and the same is, hereby **sus-
tained.**

Done 'at Sacramento, California this day 3rd of January, 1983, by the State Board. of Equalization, with **Board Members** Mr. **Bennett**, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett , **Chairman**

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

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_____ Member