

. Appeal of James R. Harris

The sole issue for determination is whether appellant James R. Harris has established any error in respondent's proposed assessments.

Appellant is a radiologist. His refusal to file California personal income tax returns for 1976 through 1979, despite respondent's demand that he do so, caused respondent to issue the subject proposed assessments. The assessments were based upon information found in appellant's 1974 state income tax return, which was the last return he filed before the years in issue. Respondent increased appellant's 1974 gross receipts by annual growth and inflation factors to determine estimated income for the years 1976 through 1979. Penalties for failure to file, failure to file after notice and demand, negligence, and failure to pay estimated tax (Rev. & Tax. Code, §§ 18681, 18683, 18684, & 18685.05, respectively) were also imposed.

On August 18, 1980, appellant was convicted of willful failure to file federal income tax returns for the years 1975, 1976, and 1977, and was sentenced to fifty days in jail and five years on probation. Appellant states that he is appealing his conviction.

Appellant claims that respondent's estimates of his income are not accurate and that he had no income for the years in question. It has long been settled, however, that respondent's determinations of additional tax and penalties are presumed correct and the burden is on the taxpayer to prove them erroneous. (Todd v. McColgan, 89 Cal.App. 2d 509 [201 P.2d 4141 (1949)]; Appeal of Harold G. Jindrich, Cal. St. Bd. of Equal., April 6, 1977.)

Appellant also contends that his earnings were not "income" subject to tax and that he is not required to file a return; further, he presents various arguments challenging the propriety of respondent's actions, the power of this board and its members to hear his appeal, and the constitutionality of the state income tax system. His constitutional arguments are of no effect in this forum, however, since article III, section 3.5 of the California Constitution precludes us from determining that the statutes involved here are unconstitutional or unenforceable, and it has been our consistent policy not to rule on constitutional questions raised in appeals involving deficiency assessments. (Appeal of Leon C. Harwood, Cal. St. Bd. of Equal., Dec. 5, 1978; Appeal of William F. and Uorothy M. Johnson, Cal. St. Bd. of Equal., Oct. 6, 1976.) The other issues he raises were disposed of in the Appeals of Fred R. Dauberger, et al., decided by this board on March 31, 1982, and in appellant's prior appeal to this forum (see Appeal of James R. Harris, Cal. St. Bd. of Equal., June 29, 1982), as well as in numerous other cases. Since appellant has provided no new facts which would refute respondent's determination of his income tax liability, the determination must be sustained..

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In the Dauberger opinion, we warned that we would not condone repeated -appeals where the arguments have been considered and rejected previously. We then advised individuals who proceed with frivolous appeals that we would seriously consider assessing a penalty for delay pursuant to section 19414 of the Revenue and Taxation Code. Section 19414 provides :

Whenever it appears to the State Board of Equalization or any court of record of this state that proceedings before it under this part have been instituted by the taxpayer merely for delay, a penalty in an amount not in excess of five hundred dollars (\$500) shall be imposed. Any penalty so imposed shall be paid upon notice and demand from the Franchise Tax Board and shall be collected as a tax.

The arguments appellant raises in the instant case were rejected by this board, in his previous appeal, as being completely frivolous. (Appeal of James R. Harris, supra.) As we stated in the Appeals of Robert R. Aboltin, Jr., et al., decided by this board on June 29, 1982,

To pursue an appeal under 'such circumstances can only be construed as an attempt to obstruct and delay the appellate review process. This cannot be tolerated because it disrupts the orderly review of serious appeals by this board and forces the state to incur unnecessary expenses.

For these reasons, we find that appellant has pursued his appeal "merely for delay"; therefore, a penalty in the amount of five hundred dollars (\$500) shall be 'imposed against him.

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ORDER

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 James R. Harris against proposed assessments of personal income tax and penalties in the total amounts of **\$21,376.83, \$23,672.50, \$26,547.79, and \$30,202.29** for the years 1976, 1977, 1978, and 1979, respectively, be and the same is hereby sustained, and that the \$500 delay penalty under section 19414 be imposed against appellant and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, this 1st day of March , 1983, by the State Board of **Equalization**, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Nevins and Mr. Harvey present.

_____, Chairman
Ernest J. Dronenburg, Jr., Member .
Conway H. Collis, Member
Richard Nevins, Member
Walter Harvey*, Member

*For Kenneth Cory, per Government Code Section 7.9