

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES E. HICKS)

Appearances:

For Appellant: James E. Hicks,
in pro. per.
For Respondent: James C. Stewart
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 James E. Hicks against proposed assessments of personal income tax and penalties in the total amounts of \$1,056.68 and \$1,920.66 for the years 1976 and 1977, respectively.

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The question for determination is whether appellant has established any error in respondent's proposed assessments of personal income tax and penalties.

Appellant apparently did not file California personal income tax returns **for** the years in issue. After receiving information indicating that appellant **was** required to file returns for the years 1976 and 1977, respondent advised him that it had no record of his having filed returns for those years, and it demanded that he file. Appellant stated that he was not required to file returns. Respondent then issued proposed assessments based upon information obtained from the California Employment Development Department. Included in the proposed assessment for the year 1976 were penalties for failure to file a return and failure to file after notice and demand. The proposed assessment for the year 1977 included penalties for **failure** to file a return, failure to file after notice and demand, **negligence**, and failure to pay estimated tax.

Respondent's determinations of tax and penalties are presumptively correct, and appellant has 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.**) No such proof has been presented. Appellant's contentions that he is not a "taxpayer" and is not required to file returns are clearly without merit, based as they are on a variety of frivolous "constitutional" **objections** to the existing system of income taxation. -(See Appeal of Harry Sievert, Cal. St. Bd. of Equal., April 8, 1980; Appeal of Arthur W. Keech, Cal. St. Bd. of Equal., **July 26, 1977.**) 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.

Appellant furnished copies of W-2 forms to respondent at the time of the protest **hearing** which showed state income tax withheld for 1976 and 1977. Respondent **then made** appropriate adjustments to the penalties and stated that credit for the withholding would be made to appellant's account.

Respondent's action, therefore, will be modified to reflect the withholding credits, but will be sustained in all other respects.

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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 James E. Hicks against proposed assessments of personal income tax and penalties in the total amounts of \$1,056.68 and \$1,920.66 for the years 1976 and 1977, respectively, be and the same is hereby modified in that a credit shall be allowed against the proposed assessments of tax to reflect the amount of California personal income tax withheld in 1976 and 1977. In all other respects, the action of the Franchise Tax Board is sustained.

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