



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
CAROL BROWN, et al.)

Appearances:

For Appellants: A. J. Porth
Porth Foundation

For Respondent: Kendall E. Kinyon and
Carl G. Knopke
Counsel

O P I N I O N

These appeals are made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Carol Brown, et al., against proposed assessments of personal income tax and penalties in the total amounts and for the years as follows:

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<u>Appellant</u>	<u>Years</u>	<u>Proposed Assessments Including Penalties</u>
Car.01 Brown	1977	\$ 81'3.32
	1978	1,330.50
	1979	2,271.67
Anthony J. Coultas	1978	392.1'0
	1979	569.1'3
Stephen J. Fairchild	1 9 . 7 9	3,018.83
Dianne, Morgan	1979	2,980.68
Harry Morgan	1979	1,039.22
Deeann E. Noennich	1 9 7 6	1,378.3 1
	1 9 7 8	1,264.68
John J. Nolan	1979	1,060.50
Clarence M. Otworth	1979	4,127.65
	1980	2,253.70
Bob Perdue	1979	3,846.00
Ira D. Pilkington	1979	2,788.54
E. Rose Stude	1979	172.67'

The common issue presented by these appeals is whether appellants **have** established **error** in respondent's proposed assessments of personal income tax or in the penalties assessed for the years in issue.

Appellants refused to file returns **after** notice and demand. Thereafter, respondent issued notices of proposed assessment based upon information received from the California Employment Development Department and other sources. The proposed assessments also included various penalties, including- those for failure to file a return and for failure to file upon notice and demand.

It is **well** settled that respondent's determinations of tax are presumptively correct, and **appellants** bear 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 **pre-**sented here..

In support of their position that they are not subject to the California personal income tax., appellants have advanced a host of familiar contentions, including, inter alia, that wages do not constitute income and that this board lacks jurisdiction to **hear and** determine appeals involving deficiency assessments of personal

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income tax. Each of the "arguments" raised by appellants was rejected as being without merit in the Appeals of Fred R. Dauberger, et al., decided by this board on March 31, 1982. There is no reason to reach a different conclusion here.

On the basis of the evidence before us, we can only conclude that respondent correctly computed appellants' tax liability, and that the imposition of penalties was fully justified. Respondent's action in these matters will, therefore, be sustained.

Finally, we note that Stephen J. Fairchild, Harry Morgan, . Ira D. Pilkington, and E. Rose Stude have brought previous appeals before this board wherein they raised the same frivolous arguments rejected here. (Appeals of James Allen, et al., Cal. St. Bd. of Equal., March 31, 1982; Appeals of Harry Morgan and Carol Morgan, Cal. St. Bd. of Equal., Feb. 1, 1982; Appeal of, E. R. Stude, Cal. St. Bd. of Equal., Jan. 5, 1982.) As we stated in the Appeals of Robert R. Aboltin, Jr., et al., decided on June 29, 1982, "[t]o pursue an appeal under such circumstances can only be construed as an attempt to obstruct and delay the appellate review process." We find that the aforementioned appellants instituted and have pursued their appeals merely for the purpose of delay. Accordingly, pursuant to Revenue and Taxation Code section 19414, a penalty in the amount of five hundred dollars (\$500) shall be imposed against each of the aforementioned appellants.

1/ Section 19414 provides as follows:

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.

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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 protests of Carol Brown, et al., against proposed assessments of personal income tax and penalties in the total amounts and for the years as follows:

<u>Appellant</u>	<u>Years</u>	<u>Proposed Assessments Including Penalties</u>
Carol Brown	1977	\$ 813.32
	1978	1,330.50
	1979	2,271.67
Anthony J. Goultas	1 9 7 8	392.10
	1979	569.13
Stephen J. Fairchild	1979	3,018.83
Dianne Morgan	1979	2,980.68
Harry Morgan	1979	1,039.22
Deeann E. Noennich	1976	1,378.31
	1978	1,264.68
John J. Nolan	1979	1,060.50
Clarence M. Otworth	1 9 7 9	4,127.65
	1980	2,253.70
Bob Perdue	1979	3,846.00
Ira D. Pilkington	1979	2,788.54
E. Rose: Stude	1979	172.67

be and the same is hereby sustained; and that a \$500 delay penalty under section 19414 be imposed against each of the four appellants named in the opinion and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, this 5th day of April, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

William M. Bennett _____, Chairman

Conway H. Collis _____, Member'

Ernest J. Dronenburg, Jr. _____, Member

Richard Nevins _____, Member

Walter Harvey* _____, Member

*For Kenneth Cory, per Government Code Section 7.9