

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of )  
JEKRY L. BALDWIN, ET AL. )

Appearances:

For Appellant: Norm Youngs  
Your Heritage Protection Association

For Respondent: Gary M. Jerrit  
Carl G. Knopke  
Noel J. Robinson  
C o u n s e l

O P I N I O N

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

Appeals of Jerry L. Baldwin, et al.

<u>Appellants</u>	<u>Year(s)</u>	<u>Proposed Tax</u>	<u>Assessments Penalties</u>
Jerry L. Baldwin	1979	\$ 936.00	\$ 468.00
	1978	1,135.00	567.50
Bernard J. Baril	1980	1,146.00	630.00
Virgil D. Barnes	1979	1,464.00	732.00
	1980	1,256.00	628.00
Kay A. Barr	1979	1,695.00	1,040.29
Mary A. Barr	1980	1,113.00	612.15
Elizabeth Basham	1980	239.00	119.50
Roger R. Berthiaume	1979	680.00	340.00
	1980	1,498.00	823.90
Roger Bland	1980	1,058.00	581.90
Dwight Blekebery	1980	1,168.00	642.40
Lyle D. Boliou	1980	1,058.00	529.00
Rudy Castro	1980	1,201.00	660.55
Carlos Cisneros	1980	2,173.00	1,195.15
Rodney Cole	1980	1,531.00	842.05
Raymond V. Corn	1980	3,158.00	1,736.90
George T. Cuda	1979	1,112.00	556.00
Fernand C. Cyr	1980	2,070.00	1,035.00
James R. DellaValle	1980	1,740.00	870.00
Joseph L. Desilets	1980	1,762.00	881.00
R. Donovan	1979	1,277.00	702.35
Mark J. Dowse	1979	2,586.00	1,293.00
William A. Easter	1980	3,283.00	1,641.50

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<u>Appellants</u>	<u>Year(s)</u>	<u>Proposed --Tax--</u>	<u>Assessments Penalties</u>
Randall W. Ebersole	1980	\$3,561.00	\$1,958.55
R. D. Ellis	1980	2,321.00	1,160.50
Albert C. Erhard	1980	1,410.00	680.00
John W. Erwin	1980	528.00	290.40
Lollie Evans	1979	123.00	67.65
Richard F. Fiedler	1980	1,048.00	524.00
Cyril W. Fischbach	1980	259.00	142.45
Frank F. Fisher	1980	2,239.00	1,231.45
Rodger Flatt	1979	662.00	331.00
Roy Eugene Forguson	1980	1,223.00	611.50
Donald C. Fuller	1979	1,662.00	831.00
Jesse Gains, Jr.	1980	850.00	425.00
Sandra Gasswint	1979	244.00	149.75
Edward B. Greer	1978	15,000.00	7,500.00
Dennis K. Hendrix	1980	1,245.00	622.50
Felix M. Hernandez	1980	958.00	526.90
Kerry D. Hicks	1980	2,407.00	1,203.50
Barbara Hinke	1980	1,509.00	829.95
Grant F. Hintze	1979	1,442.00	841.78
Terry Hodge	1979	1,849.00	924.50
Vincent A. Hughes	1980	998.00	499.00
William F. Hurd	1979	813.00	406.50
Norman E. Ireton	1980	2,895.00	1,592.25
Helen Louise Johns	1979	341.00	170.50
Robert Kessener	1978	644.10	365.58

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<u>Appellants</u>	<u>Year(s)</u>	<u>Proposed Tax</u>	<u>Assessments Penalties</u>
John M. Lane	1979	\$ 893.00	\$ 507.01
<b>Kay N. Leibfreid</b>	1979	1,288 .00	708.40
Larry Lewiston	1979	1,244.00	763.49
Richard Mangrum	1980	938 .00	515.90
Reno C. Marchioro	1980	1,498.00	749.00
Wayne Mauldin	1980	2,810.00	1,405.00
Donald E. Marsili	1979	1,772.00	886.00
	1980	1,894.00	947.00
'James McArdle	1980	724.00	362.00
Kenneth M. McCraw	1980	1,795.00	897.50
Jack McFadden	1980	544.00	299.20
Thomas J. Merendino	1979	2,751.00	1,550.46
	1980	2,081.00	1,144.55
Floyd Messer	1979	2,553.00	1,276.50
Robert A. Miller	1980	264.00	132.00
Lowell Milligan	1980	1,718.00	944.90
Sally L. Milligan	1979	43.00	26.39
Phyllis Millspaugh	1979	565.00	282.50
	1980	544.00	299.20
William C. Miracle	1980	451 .00	225.50
Cleo Ann Mitchell	1979	1,233.00	616.50
Caffry Moses, Jr.	1979	1,739.00	973.95
Houston R. Murphy	1980	1,960.00	980.00
Charles Wayne Natloh	1980	1,465.00	732.50
James Nebo	1979	1,332.00	666.00

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<u>Appellants</u>	<u>Year(s)</u>	<u>Proposed Tax</u>	<u>Assessments Penalties</u>
Ury Paul Nekrassoff	1978	\$3,115.00	\$1,738.55
	1979	3,538.60	2,172.00
German Nelson	1980	2,209.00	1,104.50
Gordon K. Nelson	1980	751.00	375.50
Raymond Nelson	1980	1,028.00	514.00
T. Nielsen	1979	493.00	246.50
Milton Noel, Jr.	1980	1,388.00	694.00
Juanita Norman	1979	763.00	381.50
Ray Nowicki	1979	298.00	95.20
John H. Nunley	1980	2,392.00	1,196.00
Patrick M. O'Brien	1979	446.00	223.00
Robert F. Olson	1980	850.00	425.00
Richard P. Orduno	1978	246.20	123.10
	1979	275.00	137.50
W. D. Ornelaz	1980	1,212.00	606.00
Ernest R. Papperman	1980	1,553.00	776.50
Charles G. Parge	1979	1,079.00	539.50
Robert L. Pasco	1980	680.00	374.00
William F. Patterson	1980	1,421.00	781.55
Louis J. Phillips	1979	1,277.00	638.50
	1980	1,608.00	884.00
James R. Pratt	1979	533.00	266.50
Peter R. Raccio	1978	1,988.00	994.00
Orick Ratzlaff	1980	1,179.00	648.45
David E. Radley	1980	2,370.00	1,185.00

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<u>Appellants</u>	<u>Year(s)</u>	<u>Proposed Tax</u>	<u>Assessments Penalties</u>
Steven D. Rea	1 9 7 9	\$2,135.00	\$1,174.25
John R. Rinehart	1979	1,013.00	506.50
Gerardo Rodriguez	1979	1,156.00	5' 78.00
Gilbert Rojo	1978	379.81	1139.90
	19' 79	418.00	229.90
	1979	1,893.00	1,041.15
Eric Rubel	1979	1,376.00	638.00
R. Salvo	1979	212.00	106.00
Leonard S. Santos	1979	1,497.00	748.50
Donald Shute	1979	1,365.00	6132.50
Diana Silveira	1980	796.00	437.80
R. W. Simmons	1980	409.00	204.50
Robert D. Slavik	1980	2,059.00	1,132.45
M. Ellis Smith	1980	1,289.00	644.50
Anthony M. Sotelo	1980	608.00	334.40
Wanda L. Spralding	1980	249.00	124.50
Fred J. Staible	1580	1,916.00	958.00
Ken Stiles	1980	1,927.00	963.50
Gerald S. Stoddard	1980	1,696.00	932.80
Geraldine Stotler	1979	298.00	149.00
Bernard E. Taber	1980	1,058.00	529.00
Timothy S. Taecker	1980	1,432.00	787.60
Bruce Talbot	1979	689.00	344.50
Roger J. Tousignant	1980	928.00	510.40
J. E. Tharp	1980	1,960.00	980.00

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William Tuttle	1979	\$1,574.00	\$ 787.00
R. Valentine	1980	1,971.00	985.50
Darell Van Sant	1980	2,805.00	1,402.50
James H. White	1979	3,026.00	1,513.00
Norman L. Williams	1979	1,398.00	699.00
	1980	1,751.00	963.05

The subject appellants did not file California personal income tax returns, and take the position that they are not taxpayers and do not owe any tax. When they refused to file returns, respondent issued notices of proposed assessment based upon information received from the California Employment Development Department. The proposed assessments also included various penalties, including those for failure to file a return and for failure to file after notice and demand.

It is well settled that respondent's determinations of additional tax, including the penalties involved in these appeals, are presumptively correct, and the burden is upon the taxpayers to prove them erroneous. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 4141 (1949)]; Appeal of Donald W. Cook, Cal. St. Bd. of Equal., May 21, 1980; Appeal of Arthur I. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Here the appellants clearly have not carried their burden. The skeleton appeal filed in each instance contained identifying information, an expression of general disagreement with the proposed assessments, and an allegation that the appellant did not owe any personal income tax. No additional facts or authority for their position was presented. It appears that all of the issues raised herein have been reviewed in detail in our opinion on March 31, 1982, in the Appeals of Fred R. Dauberger, et al., and we conclude that the Dauberger decision is determinative of these appeals. In that decision, we found no merit in the contentions made by the taxpayers.

In the Dauberger opinion we noted that the federal authorities have called for more decisive treatment of tax protester cases and we observed that some of those cases had resulted in the imposition of a penalty for delay pursuant to section 6673 of the Internal Revenue Code. (See, e.g., Roger D. Wilkinson, 71 T.C. 633 (1979); Gordon B. Leitch, Jr., ¶ 81,504 P-H Memo. T.C. (1981); James S.

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Babcock, ¶ 82,090 P-II Memo. T.C. (1981); Eugene J. May, Tl 81,119 P-H Memo. T.C. (1981); Ephraim J. Swann, ¶ 81,236 P-H Memo. T.C. (1981); Princess E. L. Lingham, ¶ 81,042 P-H Memo. T.C. (1981).) We then pointed out that section 19414 of the California Revenue and Taxation Code was patterned after section 6673 and specifically 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.

We then went on to warn that we would not condone repeated appeals where the arguments have been considered and rejected previously, and we advised all individuals who proceed with frivolous cases that serious consideration would be given to the imposition of the penalty under section 19414. Therefore, it is with great concern that we note that several appellants in the present matter, i.e., Bernard J. Baril, Kay A. Barr, Mary A. Barr, Roger Bland, Dwight Blekeberg, Raymond V. Corn, Joseph L. Desilets, Randall W. Ebersole, John W. Erwin, Cyril W. Fischbach, Frank F. Fisher, Jack McFadden, Lowell Milligan, Ray Nowicki, W. D. Ornelaz, Robert L. Pasco, William F. Patterson, Orick Ratzlaff, Diana Silveira, M. Ellis Smith, Anthony M. Sotelo, Fred J. Staible, Gerald S. Stoddard, and Roger J. Tousignant, have made and had identical arguments rejected in previous decisions by this board as being totally frivolous and without merit. 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. Consequently, we find that the aforementioned twenty-four appellants have instituted and pursued their proceedings merely for the purpose of delay and a penalty in the amount of five hundred dollars (\$500) shall be imposed against each of them.

