



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MARION DONALD)

For Appellant: Marion Donald,
in pro. per.

For Respondent: James T. Philbin
Supervising 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 Marion Donald against a proposed assessment of additional personal income tax and penalties in the total amount of \$54.55 for the year 1979.

Appeal of Marion Donald

The sole issue presented is whether respondent's assessment of income tax and penalties was proper.

Respondent received information from appellant's employer indicating that appellant was paid \$6,123.04 for 1979. Since respondent had no record of receiving a personal income tax return from her for that year, respondent demanded that appellant file such a return. Appellant refused and respondent issued a notice of proposed assessment based upon the information shown on her Wage and Tax Statement for the year at issue. Penalties for failure to file a timely return (Rev. & Tax. Code, § 18681), failure to file a return after notice and demand (Rev. & Tax. Code, § 18683), and negligence (Rev. & Tax. Code, § 18684) were added to the proposed assessment. Appellant protested the assessment. Respondent's denial of that protest led to this appeal.

It is well settled that respondent's determinations of tax are presumed correct, and that the taxpayer has the burden of proving them erroneous. (Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980; see also Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) This rule also applies to the penalties assessed in this case. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.)

Appellant's only contention appears to be that the assessment is arbitrary and has no basis in fact. However, appellant has introduced no evidence which might prove such contention. Certainly, an unsupported statement such as the assessment has "no basis in fact" is not sufficient to satisfy her burden of proof. (Appeal of K. L. Durham, supra.)

We conclude, therefore, that appellant has failed to carry her burden of proving that respondent's determination is erroneous, and that respondent's action must be sustained.

