83-SBE-156

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
ROBERT R. ABOLTIN, JR., ET AL.)

For Appellant: Pat Creech
Your Heritage Protection Association

For Respondent: Karl Munz
Counsel

OPINION

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 Robert R. Aboltin, Jr., et al., against proposed assessments of additional personal income tax and penalties in the amounts and for the years as follows:

Appeals of Robert R. Aboltin, Jr., et al.

Appellants	Year(s)	Proposed Tax	Assessments Penalties
Robert R. Aboltin, Jr.	1980	$2,213.00	$1,217.15
Carmen R. Aguirre	1980	1,102.00	606.10
David E. Allen	1980	536.00	268.00
Onner Allen, Jr.	1980	500.00	250.00
Roy C. Arehart	1980	544.00	299.20
Mary L. Asher	1980	918.00	504.90
Kelli Austin	1980	841.00	462.55
Daniel N. Avila	1980	1,619.00	809.50
Paul G. Baca	1980	850.00	425.00
Elaine D. Barnhill	1980	656.00	360.80
Irvin L. Barnhill	1980	1,971.00	1,084.05
Duane Batterman	1980	4,384.00	2,192.00
Earnest Beardon	1979	1,079.00	666.23
Nathaniel Bemis	1980	1,157.00	578.50
S. Birkett	1980	2,745.00	1,372.50
L. Boyle	1980	1,685.00	926.75
Kennett G. Butler	1980	2,845.00	1,564.75
L. Campbell	1980	514.00	282.70
Edward Carney	1979	2,322.00	1,161.00
LeRoy Caudle	1980	409.00	204.50
Thomas Chavez	1979	1,508.00	868.34
G. Cooper	1980	868.00	434.00
Allan Correia	1979	501.00	307.48
James M. Crane	1980	395.00	197.50
Cora Crenshaw	1980	310.00	155.00
H. Davisson	1980	1,575.00	866.25
Toni DeMaris	1980	968.00	484.00
Werner Dibbern	1980	1,718.00	944.90
Nathan Donohue	1980	1,498.00	749.00
Thomas V. Dutton	1980	1,751.00	963.05
John D. Ewerling	1980	2,130.00	1,065.00
Anthony Favreau	1979	671.00	335.50
Jim M. Felts	1979	1,904.00	1,121.46
Gregory D. Flynn	1980	968.00	53 2.40
Francis M. Folsom	1980	1,421.00	710.50
Sharon L. Fountaine	1980	769.00	422.95
Herbert Frankhauser	1980	560.00	308.00
Kelvin Gaines	1980	796.00	398.00
Cat-lee I. Hansen	1980	1,597.00	798.50
Randy J. Heinrichs	1980	1,344.00	672.00
Frank Hendricks	1980	423.00	211.50
Bill J. Hughes	1980	2,237.00	1,230.35
Richard J. Jervis	1979	893.00	548.07
Albert P. Keeler, Jr.	1978	453.00	226.50
Ron D. Keener	1980	1,828.00	1,005.40
Jay M. Lloyd	1979	1,673.00	836.50
	1980	2,398.00	1,318.90

Appeals of Robert R. Aboltin, Jr., et al.

Appellants	Year(s)	Proposed Tax	Assessments Penalties
Paul P. Lorenzetti	1979	$1,200.00	$ '736.49
Joyce K. Maez	1980	814.00	447.70
Belva A. Manley	1980	787.00	432.85
Patrick J. Marano	1980	832.00	416.00
Marvin L. McCoy	1978	231.00	115.50
	1979	1,068.00	655.47
Steven J. Moore	1980	437.00	218.50
W. Derald Miles	1980	2,324.00	1,162.00
Cecil Miller	1979	1,860.00	1,141.56
	1980	1,267.00	696.85
Eleanore E. Nelson	1979	5,468.00	3,355.53
Ronald S. Nisby	1980	632.00	316.00
Daniel Pardus	1980	823.00	452.65
Joseph Pearson	1980	2,688.00	1,344.00
Minor C. Phillips	1979	1,827.00	1,119.26
B. Pilcher	1979	334.00	202.26
Dean A. Puett	1980	2,454.00	1,227.00
Evelyn Roberts	1979	207.00	103.50
Jane K. Roberts	1980	724.00	398.20
Irving G. Robinson	1979	469.00	287.05
Joseph F. Roblee	1979	549.00	306.89
Patrick M. Rooney	1980	1,465.00	732.50
Dennis Sardella	1980	742.00	371.00
David Sherr	1979	883.00	514.97
Mark Simpson	1980	1,465.00	805.75
Jo A. Trenary	1980	1,564.00	860.20
Robert J. Trenary	1980	1,487.00	817.85
Gary S. Turney	1979	833.00	416.50
Luis J. Valdes	1980	1,311.00	655.50
Diane G. Valdivia	1980	1,124.00	562.00
Rogue T. Valdivia	1978	1,943.43	1,005.32
	1980	1,575.00	866.25
M. Valencia	1980	796.00	437.80
D. F. Walton	1980	1,333.00	733.15
A. Wiese	1980	2,252.00	1,238.60
James R. Wilcoxen	1980	1,674.00	920.70
Leon Wirts	1980	310.00	170.50
Eliseo Yniguez	1980	1,762.00	881.00

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 414] (1949); Appeal of Donald W. Cook, Cal. St. Bd. of Equal., May 21, 1980; Appeal of Arthur J. 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. Babcock, ¶ 81,090 P-H Memo. T.C. (1981); Eugene J. May, ¶ 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., Robert R. Aboltin, Jr., Carmen R. Aguirre, Mary L. Asher, Kelli Austin, Irvin L. Barnhill, Earnest Beardon, L. Boyle, Kennett G. Butler, LeRoy Caudle, Allan Correia, H. Davisson, Thomas V. Dutton, Gregory D. Flynn, Herbert Frankhauser, Bill J. Hughes, Ron D. Keener, Paul P. Lorenzetti, Joyce K. Maez, Belva A. Manley, Daniel Pardus, Dean A. Puett, Irving G. Robinson, David Sherr, Jo A. Trenary, Robert J. Trenary, Rogue T. Valdivia, M. Valencia, D. F. Walton, A. Wiese, and Leon Wirts, 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 thirty 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.

Appeals of Robert-R. Aboltin, Jr., et al.

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 the previously listed appellants against proposed assessments of additional personal income tax and penalties in the amounts and for the years, set forth in the opinion, be and the same is hereby sustained, and that the $500 delay penalty under section 19414 be imposed against each of the thirty appellants named in the opinion and the Franchise Tax Board shall collect the same.

Done at Sacramento, California, this 28th day of July, 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