83-SBE-210

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
)
RONALD W. MATHESON)

Appearances:

For Appellant: Ronald W. Matheson, in pro. per.

For Respondent: Gary M. Jerrit
Noel J. Robinson
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 Ronald W. Matheson against proposed assessments of personal income tax and penalties in the total amounts of $5,087.55 and $8,471.26 for the years 1979 and 1980, respectively.

Appellant did not file California income tax returns for 1979 and 1980. Respondent received information indicating that appellant was required to file returns for those years and demanded that he do so. When appellant continued to refuse to file, respondent issued proposed assessments for both years based upon information received from appellant's employer, West Orange County Laboratory, Inc., and certain financial institutions. A second proposed assessment for 1980 was issued when respondent learned that the first assessment reflected only a portion of the income appellant received in 1980 from his employer. Penalties for failure to file a return, failure to file after notice and demand, failure to pay estimated tax, and negligence were imposed with respect to the three proposed assessments. After considering appellant's protests, respondent affirmed the proposed assessments, and appellant filed timely appeals. The appeals were consolidated for decision by this board.

Respondent's determinations of tax and penalties are presumed correct, and the taxpayer has the burden of proving them to be incorrect. (Appeal of Ralph E. Lattimer, Cal. St. Bd. of Equal., Jan. 5, 1982; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Respondent has agreed to revise the first 1980 proposed assessment to remove $10 of interest from appellant's income which appellant contends he did not receive. Appellant has not produced any evidence to prove any other error in respondent's proposed assessments. Rather, he merely repeats various statutory and constitutional objections to this state's taxation system. Appellant's statutory objections have been repeatedly determined to be meritless. (Appeals of Fred R. Dauberger et al., Cal. St. Bd. of Equal., March 31, 1982; Appeal of Ronald W. Matheson, Cal. St. Bd. of Equal., Feb. 6, 1980.) Furthermore, we are precluded by section 3.5 of article III of the California Constitution from determining that the statutes involved are unconstitutional or unenforceable, and it has been our consistent policy to decline to decide constitutional issues in appeals involving deficiency assessments. (Appeal of Leon C. Harwood, Cal. St. Bd. of Equal., Dec. 5, 1978.) For the above reasons, respondent's determinations, as modified by its concession concerning 1980, must be sustained.

This board has expressed its concern with appellants who abuse the appellate process by repeatedly pursuing frivolous appeals and has warned that it would consider imposing against such appellants the penalty contained in Revenue and Taxation Code section 19414. That section states:

> 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.

Although appellant obtained one minor adjustment in one of the proposed assessments, the principal arguments he presented in these appeals are identical to the arguments which this board rejected in his prior appeal. (Appeal of Ronald W. Matheson, supra.) Under these circumstances, we conclude that the appeals before us were instituted solely for the purpose of delay. Therefore, we impose a $500 penalty against appellant pursuant to section 19414.

ORDER

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 Ronald W. Matheson against proposed assessments of personal income tax and penalties in the total amounts of $5,087.55 and $8,471.26 for the years 1979 and 1980, respectively, be and the same is hereby modified in accordance with the preceding opinion, In all: other respects, the action of the Franchise Tax Board is hereby sustained, and a $500 delay penalty is imposed pursuant to section 19414 of the Revenue and Taxation Code, against Ronald W. Matheson and shall be collected by the Franchise Tax Board.

Done at Sacramento, California, this 15th day of September, 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