



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOAN MUNCASTER)

Appearances:

For Appellant: Robert Muncaster

For Respondent: Jon Jensen
Noel J. Robinson
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 Joan Muncaster **against** a proposed assessment of additional personal income tax and penalties in the total amount of \$316.80 for the year 1978.

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Respondent received information from the Employment Development Department (EDD) that appellant had received \$10,235 in wages during 1978 from her employer, American Airlines, Inc. When respondent could not locate a 1978 personal income tax return from appellant, notice was sent to appellant and a demand made that a return required by the Personal Income Tax Law be filed within 20 days. Appellant's response merely stated that she was not **required to** make an income tax return "since she has not received 'income'" (Resp. Ex. B) and her employer should have deducted from her wages and sent to the state a sufficient amount so that "the State of California has been properly paid" (Resp. Ex. B.) No return for 1978 was filed.

Respondent then issued a proposed assessment based on the income information it had received from EDD. That information did not show any taxes withheld from appellant's wages during 1978. Penalties were also imposed for failure to file, failure to file after notice and demand, negligence, and failure to pay estimated tax.

It is well settled that respondent's determinations of tax and the penalties involved here are presumptively correct and that the appellant bears the burden of showing that they are incorrect. (Appeal of Harry W. Tepper, Cal. St. Bd. of Equal., July 28, 1983,) Appellant contends that the presumption disappears and the burden of proof must be shifted to respondent because its assessment was arbitrary, excessive, and based on assumptions not supported by the evidence (citing Helvering v. Taylor, 293 U.S. 507 [79 L.Ed. 623] (1935)). However, appellant has presented no evidence at all which might show that respondent's determination was in any way incorrect. This lack of proof on appellant's part, combined with respondent's appropriate use of information from EDD to determine appellant's liability, negates any suggestion that respondent's **assessment** was arbitrary. The burden of proof, therefore, remains squarely on appellant.

Appellant makes a number of constitutional objections to respondent's assessment. This board is precluded from deciding these arguments by both long-standing policy and constitutional mandate. (Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982,) Appellant's argument that her wages are not **income** has been repeatedly rejected. (Appeals of Fred R. Dauberger, et al., supra.)

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Appellant contends **that** it is American Airlines which is liable for the tax, not herself, since American Airlines purportedly withheld taxes from her wages. However, appellant has presented no proof that American Airlines withheld tax from her wages. It is appellant's burden, not respondent's, to provide such proof.
(Appeals of Fred R. Dauberger, et al., supra.)

Appellant is clearly a person who is required to file a California personal income tax return, (Rev. & Tax. Code, § 18401.) She has not shown that respondent's determination of her tax liability is in any way erroneous. Similarly, appellant has failed to provide any convincing reason why we should not uphold the various penalties involved here. Therefore, respondent's action must be sustained.

