



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DONALD J. PRASCH)

Appearances:

For Appellant: Donald J. Prasch,
in pro. per.

For Respondent: Allen R. Wildermuth
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 Donald J. Prasch against a proposed assessment of additional personal income tax and penalties in the total amount of \$10,149.46 for the year 1979.

Appeal of Donald J. Prasch

The sole issue is whether appellant has established error in respondent's proposed assessment.

Appellant filed a California personal income tax return form for 1979 on which he had written the words "object" or "none" in the spaces provided for the amounts of his income, deductions, and credits. The form was signed and dated. Respondent notified appellant that the filing did not constitute a valid tax return and demanded that he file a return containing all the information required by law. Appellant responded that the Constitution of the United States protected his right to file such a return, and he would provide no further information until he was granted complete immunity from prosecution. Respondent then issued a notice of proposed assessment of tax estimated from information in appellant's 1978 return about three installment sales contracts and on the basis of information from appellant's employer that appellant had estimated his previous salary (during 1979) at \$35,000-\$50,000 per year.

Appellant protested that respondent's estimate of his income was excessive, that any imposition of penalty and interest constituted an improper penalization of his constitutional right not to incriminate himself, and that he had not earned any lawful money but only nontaxable Federal Reserve notes, which were exempt from taxation.

A form 540 which fails to contain sufficient information from which respondent can compute and assess the tax liability of a particular taxpayer does not constitute a return. (See Charles C. Reiff, 77 T.C. 1169 (1981).) To qualify as a return, the form must state specifically the amounts of gross income and the deductions and credits claimed. (See Sally Conforte, 74 T.C. 1160 (1980).) Where the taxpayer files no return or otherwise refuses to cooperate in the ascertainment of his income, respondent has great latitude in determining the amount of tax liability, and may use reasonable estimates to establish the taxpayer's income. (See, e.g., Joseph F. Giddio, 54 T.C. 1530 (1970); Norman Thomas, ¶ 80,359 P-H Memo. T.C. (1980); Floyd Douglas, ¶ 80,066 P-H Memo. T.C. (1980).) It is well settled that respondent's determinations of tax are presumptively correct, and the burden is on the taxpayer to prove them erroneous. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980; Appeal of Harold G. Jindrich, Cal. St. Bd. Of Equal., April 6, 1977.) This rule also applies to the penalties assessed in this case. (Appeal of K. L. Durham,

Appeal of Donald J. Prasch

supra; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) Appellant's contentions that the assertion of his Fifth Amendment privilege against self-incrimination excuses his failure to file a return for the year in issue has repeatedly been rejected by the courts and this board. (See, e.g., United States v. Daly, 481 F.2d 28 (8th Cir.), cert. den., 414 U.S. 1064 [38 L.Ed.2d 469] (1973); Appeal of Robert A. Skower, Cal. St. Bd. of Equal., Feb. 1, 1982.)

Appellant's contention that Federal Reserve notes cannot constitute taxable income has been rejected by us before. (See Appeals of Fred R. Dauberger, et al., Cal. St. Bd. of Equal., March 31, 1982.) Further, appellant has offered no substantive evidence that the amount of tax assessed by respondent is incorrect and that some other amount is the correct amount. Therefore, we have no alternative but to sustain respondent's actions.

Appeal of Donald J. Prasch

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 D E C R E E D , pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Donald J. Prasch against a proposed assessment of **additional personal** income tax and penalties in the total amount of **\$10,149.46** for the year 1979, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of Play , 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

Richard Nevins , Chairman
Ernest J. Dronenburg, Jr. , Member
Conway H. Collis , Member
William M. Bennett , Member
Walter Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9