



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
EDMUND F. SPELLACY }

Appearances:

For Appellant: T. H. Poole, Public Accountant,

For Respondent: W.M. Walsh, Assistant Franchise Tax Commissioner; James J. Arditto, Franchise Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 20 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in denying the claim of Edmund F. Spellacy for refund of interest on taxes overpaid for the years 1936 and 1937 in the amounts of \$80.20 and \$343.60, respectively.

During those years Appellant, a member of the faculty of the University of Washington, entrusted one Gordon Gray, a broker, with cash and securities of substantial amount for investment. Gray committed suicide on March 23, 1939, leaving a note stating that "My suicide is the result of my financial mess." Audit of Gray's accounts showed that he had misappropriated or embezzled funds and securities of his clients in very large amounts. In the years 1936 and 1937 Gray periodically made reports to Appellant indicating purchases and sales of securities and for those years he prepared state and Federal income tax returns for Appellant showing a substantial income from such transactions, later ascertained to be false and fictitious. Without knowledge of the falsity of such returns Appellant executed and filed them. After the suicide of Gray in 1939, Appellant filed claims for refund of the taxes erroneously paid the State for the years 1936 and 1937. The Commissioner allowed the claims and refunded \$80.20 for the year 1936 and \$343.60, for the year 1937. He did not, however, allow interest on the amounts of the overpayments and Appellant thereupon filed this appeal from that action.

Section 20 of the Personal Income Tax Act provides that

"Interest shall be allowed and paid upon any overpayment of any tax, if the overpayment was not made because of an error or mistake on the part of the taxpayer, at the rate of six per cent per annum.,."

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The only question presented to us, accordingly, is whether the overpayments of tax for the years 1936 and 1937, occasioned by the filing of returns showing taxable income which in reality did not exist, were due to errors or mistakes on the part of the taxpayer.

Since the Act does not define the terms "error or mistake" it is proper to consider the purpose for which the terms were used in determining the meaning to be ascribed to them. In re Goddard, 24 Cal App. (2d) 132, 140. It is, we believe, rather obvious that the Legislature intended through their inclusion to relieve the State from the burden of paying interest on an overpayment of tax in a case in which the overpayment was made solely as a result of some act or omission of the taxpayer.

The erroneous reporting of nonexistent income in the instant case was clearly due to a mistake of fact as distinguished from one of law. People v. LaMarr, 20 Cal. (2d) 705, 710. People v. Kelly, 35 Cal. App. (2d) 571, 574. The State played no part whatever in such erroneous reporting, having made no assessment of the tax, issued no ruling providing for the payment of the amount of the excess or taken any other action which might in any way be held attributive to the overpayment.

While it may be doubted whether definitions of mistake for such purposes as the reformation of an instrument or relief from a judgment are here material, it may be observed that the term has been defined as follows:

"A mistake exists when a person, under some erroneous conviction of law or fact, does or omits to do some act which, but for the erroneous conviction, he would not have done or omitted. It may arise either from unconsciousness, ignorance, forgetfulness, imposition or misplaced confidence." Salazar v. Steelman, 22 Cal. Ppp. (2d) 402, 410, quoting from Burton v. American Bonding & Trust Co., 182 Ky. 637, 206 S.W. 884; emphasis added. Other authorities defining mistake as including actions or omissions resulting from misplaced confidence include Sawyer Coal & Ice Co. v. Kinnett-Odom Co., 192 Ga. 166, 14 S.E. (2d) 879, and Davis v. Steuben School Township, 19 Ind. App. 694, 50 N.E. 1.

In view of these considerations, we are unable to conclude that the Commissioner acted unreasonably in refusing to allow the Appellant interest on his overpayments of tax.

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 that the action of Chas. J. McColgan, Franchise Tax Commissioner, in denying the claim of Edmund F. Spellacy for refund of interest on taxes overpaid for the years 1936 and 1937 in the amounts of \$80.20 and 8343.60, respectively, pursuant to Chapter 329, Statutes of 1935, as amended, be and the same is hereby sustained.

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Done at Sacramento, California this 19th day of July, 1944,
by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
J. H. Quinn, Member

ATTEST: Dixwell L. Pierce, Secretary