



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the 'Appeal of  
JOHN L. TODD

Appearances:

For Appellant: R. E. Brotherton, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;  
Hebard P. Smith, Associate Tax  
Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code (formerly Section 20 of the Personal Income Tax Act) from the action of the Franchise Tax Board in denying the claim of John L. Todd for refund of interest in the amount of \$7.68 on a personal income tax deficiency assessment for the year 1942.

Appellant and his wife filed separate income tax returns for 1942, and both paid their taxes in three installments-on or about April 13, August 12, and December 3, 1943. Included in the income of Appellant and his wife for 1942 was Appellant's share of the net income of his partnership for that year. As the result of the shifting by the Franchise Tax Commissioner (now succeeded by the Franchise Tax Board) of certain of Appellant's partnership income from the wife to Appellant, the Commissioner issued a proposed deficiency assessment against Appellant in the amount of \$201.43 and coincident therewith determined an overpayment in favor of Appellant's wife in the amount of \$201.42. Pursuant to Section 15(d)(1) of the Personal Income Tax Act (now in Section 18690 of the Revenue and Taxation Code), Appellant and his wife notified the Commissioner that the wife's overpayment was to be credited against Appellant's deficiency. The Franchise Tax Board demanded interest upon Appellant's deficiency in the amount of \$7.68 for the period April 15, 1943, the date prescribed for the payment of the first installment, to December 3, 1943, the date of payment of the wife's third and final installment, which interest is the subject of this appeal.

Section 15(b)(3) of the Personal Income Tax Act (now in Section 18688 of the Revenue and Taxation Code) in 1942, provided for the assessment of interest on a deficiency at the rate of 6 per cent per year from the date prescribed for the payment of the tax (or, if the tax was paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency was assessed.

Section 15(d)(1) of the Act (now in Section 18690 of the Code), in 1942, provided as follows:

Where an overpayment is made by any taxpayer for any year, and a deficiency is owing from the husband or wife of the taxpayer for the same year, and both husband and wife notify the commissioner in writing prior to the expiration of the time within which credit for the overpayment may be allowed, that the overpayment may be credited against the deficiency, no interest shall be assessed on such portion of the deficiency as is extinguished by the credit for the period of time subsequent to the date the overpayment was made." (Under-scoring added.)

Appellant contends that his wife's overpayment extinguished his deficiency installment by installment, leaving no deficiency upon which interest was payable. This contention, however, is not supported by the authorities.

In Anderson v. McColgan (March 27, 1947), Sacramento Superior Court, No. 71374, the Court held that a personal income tax paid in installments is not overpaid until the State has received the full amount owing from the taxpayer for the taxable year and, accordingly, that interest on an overpayment, provided for in Section 19062 of the Code, does not commence until the installment payments exceed the total tax. Applying the rule of this case, the Commissioner determined that there was no overpayment of Appellant's wife's tax until her third installment;

Appellant argues that this appeal is distinguishable from the Anderson case in that the problem of interest in the Anderson case affected only one-taxpayer whereas two taxpayers (husband and wife) are affected in the credit problem involved herein. Appellant does not show the materiality of this distinction, and we believe that similar considerations apply in both situations. Pursuant to Section 14 of the Act (now in Section 18552 of the Code), a taxpayer may elect to pay his tax in three equal installments, in which case the first installment is paid

on the date otherwise prescribed for the payment of the entire tax and the second and third installments are paid at four month intervals thereafter. In the Anderson case the Court held that the taxpayer should not be allowed interest against the State on the overpayment appearing in each installment while still owing the State the balance of his tax due for the taxable year. Similarly here, it is our opinion that Appellant's wife did not make an overpayment on each installment which could be credited against Appellant's deficiency, while still owing the balance due-on her own 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, pursuant to Section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of John L. Todd for a refund of interest in the amount of \$7.68 on a personal income tax deficiency assessment for the year 1942 be and the same is hereby sustained.

Done at Los Angeles, California, this 7th day of October, 1952, by the State Board of Equalization.

_____	, Chairman
<u>Wm. G. Bonelli</u>	, Member
<u>J. H. Quinn</u>	, Member
<u>Geo. R. Reilly</u>	, Member
<u>Thomas H. Kuchel</u>	, Member

ATTEST: Dixwell L. Pierce, Secretary