



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
J. B. FERGUSON)

Appearances:

For Appellant: J. B. Ferguson, in propria persona
For Respondent: Burl D. Lack, Chief Counsel; John
S. Warren, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of J. B. Ferguson for refund of personal income tax penalties in the amounts of \$90.96, \$5.81 and \$1.53 for the years 1950, 1951 and 1952, respectively.

During the years in question Appellant, a resident of Hawaii, received royalties on oil properties located in California. The Franchise Tax Board learned of the 1950 royalty payment by means of an information return of a Los Angeles bank, and in August, 1953, demanded by letter that Appellant file a return for 1950. Appellant, in November, 1953, filed delinquent nonresident returns for 1950, 1951 and 1952 in which he reported the royalty income received in each year. The remittance accompanying the returns was sufficient to pay the taxes and interest shown to be due but not penalties. After an exchange of correspondence concerning penalties, Appellant paid the penalties and filed the claims here in question,

It is Appellant's position that, living in Hawaii since 1943, he was not aware that a tax was owed to California, and that it is unreasonable for this State to exact penalties without having notified a nonresident of his tax obligations. He argues that his delay in payment of the taxes could have been avoided had the State taken prompt action to notify him after its receipt of the information returns from the bank.

Section 18681 of the Revenue and Taxation Code prescribes a penalty which shall be added to the amount of the tax for failure of a taxpayer to make and file a return on or before the due date, unless it is shown that the failure

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is due to reasonable cause and not due to wilful neglect.

Reasonable cause, such as to excuse a taxpayer's failure to file on time, has been construed under a similar Federal statute (Section 291, Internal Revenue Code of 1939) to mean nothing more than the exercise of ordinary business care and prudence, or such cause as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances (Girard Investment Co. v. Commissioner, 122 Fed. 2d 843; Orient Investment and Finance Co. v. Commissioner, 166 Fed. 2d 601; Sanders v. Commissioner, 225 Fed. 2d 629, cert. den. 350 U.S. 967; Charles E. Pearsall & Son, 29 7 4 7) .

It is a matter of common knowledge that many of the states, the United States, and foreign countries impose taxes upon income of nonresidents from sources within their borders. If a taxpayer seeks and relies upon the advice of counsel, his lapse may possibly be excused (Orient Investment and Finance Co. v. Commissioner, supra) but ignorance of the law by a nonresident does not in itself constitute reasonable cause (Ross v. Commissioner, 44 B.T.A. 1, 17; Sabatini v. Commissioner, 98 Fed. 2d 753. See also Henningsen v. Commissioner, 243 Fed. 2d 954).

Under the Personal Income Tax Law, the obligation to file a return and pay the tax arises from the receipt of income and is not dependent upon receiving notice from the Franchise Tax Board. It is our opinion that the exercise of ordinary business care and prudence would have led the Appellant to make inquiry concerning his tax liability to this State for oil royalties received from sources within this State,

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of J. B. Ferguson for refunds of personal income tax penalties in the amounts of \$90.96, \$5.81 and \$1.53 for the years 1950, 1951 and 1952, respectively, be and the same is

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hereby sustained,

Done at Sacramento, California, this **15th** day of
September, **1958**, by the State Board of Equalization,

Geo. R. Reilly _____, Chairman

Paul R. Leake _____, Member

Robert E. McDavid _____, Member

J. H. Quinn _____, Member

Robert G. Kirkwood _____, Member

ATTEST: Ronald B. Welch _____, Acting **Secretary**