



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ROBERT M. CATLIN, JR., AND)
ESTHER H. CATLIN)

For Appellants: Robert M. Catlin, Jr., and
Esther H. Catlin, in pro. per.

For Respondent: Burl D. Lack, Chief Counsel;
Peter S. Pierson, Associate
Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Robert M. Catlin, Jr., and Esther H. Catlin against a proposed assessment of additional personal income tax and penalty in the total amount of \$2,693.48 for the year 1958.

By contract dated September 19, 1958, appellants sold a one-sixth interest in California land under a sales agreement which called for a down payment of 25 percent, with the balance payable in equal annual installments over the next three years. Appellants, who are Longtime residents of Massachusetts, did not file a timely nonresident return reporting the sale for California tax purposes.

After an inquiry by the Franchise Tax Board, appellants filed nonresident returns for 1958 and 1959, in November of 1960, electing to report the gain from the sale on the installment basis. Nonresident returns were also prepared and filed for 1960 and 1961, all using the installment method.

The Franchise Tax Board denied appellants the right to use the installment method, treating the entire gain on the

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sale as taxable in the year 1958, and imposed a 25 percent penalty for failure to file a return, pursuant to section 18681 of the Revenue and Taxation Code,

The first issue presented here, that is, whether appellants may use the installment method, is the same as that decided by us on October 27, 1964, in the Appeal of Estate of Anna Armstrong, Deceased. As we pointed out in that appeal, federal authorities interpreting statutes and regulations substantially identical to those of California have established that the failure to file a timely return does not in itself prevent the use of the installment method, even if the failure is due to negligence, (Baca v. Commissioner, 326 F.2d 189; F. E. McGillick Co., 42 T.C. No. 83.) Since there was no prior election to use some other method, and since it is undisputed that the requirements of the code and regulations were met in other respects (Rev. & Tax. Code, §§ 17578 and 17577; Cal. Admin. Code, tit. 18, reg. 17577-17580(e)), we conclude that appellants may use the installment method,

With regard to the negligence penalty, we also held in the Armstrong appeal that failure to file 8 timely non-resident return reporting the sale of California realty may be excusable if reliance was placed upon a competent tax adviser to whom all relevant facts were disclosed. Appellants contend that they gave full information to a firm of Boston tax attorneys and relied upon them to file all the necessary returns. They state that this firm, on which they have relied for many years, prepared the delinquent California returns as soon as they realized their mistake,

We note, however, that appellants have not named this firm nor have they supplied us with a statement from that firm or any other evidence which would corroborate their allegation. In addition, we take official notice of the fact that appellants' 1958 and 1959 returns were prepared, not by Boston attorneys, but by a Santa Barbara accounting firm. On such a record, we cannot reasonably upset respondent's determination of negligence.

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,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Robert M. Catlin, Jr., and Esther H. Catlin against a proposed assessment of additional personal income tax and penalty in the total amount of \$2,693.48 for the year 1958, be modified by recomputing the tax using the installment method and by applying a negligence penalty to the tax as thus reduced.

Done at Sacramento California, this 17th day of November, 1964, by the State Board of Equalization.

Paul R. Leake Chairman
John W. Lynch Member
Richard [unclear] Member
Wesley [unclear] Member
[unclear] Member

Attest [Signature] Secretary