



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ALDEN SCHLOSS)

Appearances:

For Appellant: Alden Schloss, in pro. per.
For Respondent: John D. Schell
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 claim of Alden Schloss for refund. of penalty and interest in the total amount of \$20.12 for the year 1967.

The question for decision is whether a penalty for underpayment of estimated personal income tax was properly imposed for the taxable year 1967.

Appellant is an engineer employed during 1966 and 1967 by the California Institute of Technology in Pasadena, California. On his personal income tax return for 1966 appellant reported taxable income derived from that employment in the amount of \$14,981.33 and paid \$523.91 in personal income tax. In October, 1967, appellant filed a timely declaration of estimated tax for 1967, declaring an estimated tax for that year of less than \$200 and therefore making no payment. Later in 1967 appellant was married. On April 9, 1968, appellant and his wife filed a joint return for 1967 in which they reported taxable income of \$18,686 and paid self-assessed tax in the amount of \$563.

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On August 23, 1968, respondent issued an assessment of penalty for underpayment of estimated tax plus interest in the combined amount of \$20.12. Appellant paid that amount and filed a claim for refund. Respondent's denial of that refund claim gave rise to this appeal.

Under the estimated tax provisions of the Revenue and Taxation Code, as they read in 1967, a single taxpayer was required to file a declaration of estimated tax for 1967 if his tax for 1966 was \$200 or more (§§ 18412.5; 18413, subd. (c)). "Estimated tax" meant the lesser of (a) the tax due for 1966, or (b) a tax computed on 1967 estimated income, at 1966 rates. (§ 18413, subds. (a) and (b).) If the estimated tax for 1967 as defined above, was more than \$200, 50 percent of that estimated tax had to be paid with the declaration by October 31, 1967. (§§ 18413; 18556, subd. (a); 18435, subd. (a).) If the estimated tax for 1967 was less than \$200 no payment was due in October, 1967; if the person's tax for 1966 had been more than \$200, however, a declaration of estimated tax had to be filed (§ 18413, subd.(c)).

In 1967 section 18685.1 of the Revenue and Taxation Code provided, in pertinent part:

(a) In case of any underpayment of estimated tax required to be paid under Section 18556 by the date prescribed therein, ... a penalty of 10 percent of the amount of the underpayment shall be added to the tax for the taxable year and shall be due and payable upon notice and demand from the Franchise Tax Board,

(b) The amount of the underpayment of estimated tax upon which the penalty is based shall be determined under Sections 18685.5 or 18685.7, whichever is applicable for the taxable year.

Section 18685.5, applicable to appellant's taxable year 1967, provided:

...the amount of the underpayment of estimated tax shall be the excess of 50 percent of whichever is the lesser of--

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(a) The estimated tax set forth in Section 18413(a), or,,

(b) 80 percent...of a tax which is based on the taxable income shown in the return for the taxable year, computed in accordance with the tax rates in effect for 1966, and reflecting any credits allowable under this part, provided it amounts to two hundred dollars (\$200) or more, in the case of a return by a single person and a joint return filed by a married couple,...

over the amount, if any, of estimated tax paid on or before the date prescribed for payment.

Using the alternative computation set forth in section 18685.5, subdivision (b), respondent determined. **there had** been an underpayment for 1967 of \$155.84. Ten percent of that underpayment, or \$15.58, was therefore **assessed** by respondent as a penalty for underpayment of tax, pursuant to section 18685.1 of the Revenue and Taxation Code. Interest in the amount of \$4.54 was added to the penalty. (Rev. & Tax, Code, § 18685.3.)

Appellant urges that the Declaration of Estimated Tax form (Form 540 ES) contains no definition of the word "estimate!" He states that before filing his declaration of estimated tax in October of 1967 he "estimated" his 1967 tax, taking into consideration his forthcoming marriage and the fact that he would be filing a joint return for the first time for 1967. He contends he **also** knew he would be entitled to other new deductions as a result of his marriage but as of October, 1967, he did not have all the information regarding the amount of **such** deductions. Appellant states that he arrived at an estimated tax for 1967 of \$191 and since that **figure was** less than \$200 he made no payment when he filed his declaration in October, 1967. He argues that the fact **that** his "estimate" turned out to be erroneous does **not** justify imposition of the penalty. We cannot agree.

The entire statutory scheme set out above **is** automatic in its application and results in the following **conclusion:** if it turned out that there was any **underpayment** of estimated tax by appellant for 1967, then respondent had to impose a penalty for underpayment of estimated tax under section 18685.1 of the Revenue and

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Taxation Code. The language of section 18685.1, as it read in 1967, was mandatory; it granted no relief upon a showing of reasonable cause or lack of wilful neglect. The same conclusion has been reached under comparable federal estimated tax provisions. (Int. Rev. Code of 1954, § 6654; Treas. Reg. § 1.6654-1(a)(1).) The federal courts have held that imposition of the penalty for underpayment of estimated tax is mandatory and extenuating circumstances- are irrelevant. (Anne Goyne Mitchell, 51 T.C. 641; Estate of Barney Ruben, 33 T.C. 1071; Estate of Josephine Clay Simpson, T.C. Memo., Mar. 30, 1962; see also United States v. Steck, 295 F.2d 682.) This strict rule has been followed even when information as to the precise amount of income for a particular year is not available to the taxpayer at the time the calculation of estimated tax is made. (Rev. Rul. 62-202, 1962-2 Cum. Bull. 344; Stewart v. United States, 263 F. Supp. 451.) In 1967 a California taxpayer had the safeguard of paying an estimated tax for the current year based upon the preceding year's taxable income (Rev. & Tax. Code, § 18413, subd. (a)), thereby insuring against the imposition of any penalty for underpayment of estimated tax no matter what his actual tax liability for the current year turned out to be. By choosing not to do this, a taxpayer risked the consequences, as appellant did here.

Appellant further contends that respondent had a duty to inform California taxpayers of the degree of accuracy which was required in order to avoid the penalty, for underpayment of estimated tax. He argues that Form 540 ES contained no indication that if his estimated tax was more than 20 percent erroneous when compared with his actual tax liability for 1967, he would be subject to the 10 percent penalty.

The latter contentions amount to an estoppel argument. It is well established that estoppel will not be invoked against the government or its agencies except in rare and unusual circumstances. (Aebli v. Board of Education, 62 Cal. App. 2d 706, 729 [145 P.2d 601]; Donovan v. City of Santa Monica, 88 Cal. App. 2d 386, 394 [199 P.2d 51]; Appeal of Certain-teed Products Corp., Cal. St. Bd. of Equal., May 28, 1963.) Furthermore the doctrine of equitable estoppel does not erase the duty of due care and is not available for the protection of one who has suffered loss solely by reason of his own failure to act or inquire. (Hampton v. Paramount Pictures Corp.; 279 F.2d 100, cert. denied, 364 U.S. 882 [5. Ed. 2d 103].)

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It is true, as pointed out by appellant, that the Declaration of Estimated Tax form (Form 540 ES) did not spell out the degree of mathematical accuracy required in estimating tax in order to avoid the penalty. However, the instructions accompanying that form did state:

4. FAILURE TO FILE OR PAY: Failure to file or pay the amount of estimated tax will result in the addition of a penalty in the amount of 10 percent of the amount of underpayment....

This instruction certainly should have alerted appellant to the possibility of a penalty. When he elected not to follow the safest route of remitting one-half of his 1966 tax liability, he could easily have made inquiry of respondent to determine the degree of mathematical accuracy required in order to avoid the penalty for underpayment of estimated tax.

For the above reasons we feel respondent's action in this matter must be sustained.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Alden Schloss for refund of penalty and interest in the total amount of \$20.12 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of October, 1971, by the State Board of Equalization.

Paul C. [Signature], Chairman
[Signature], Member
John W. [Signature], Member
_____, Member
_____, Member

ATTEST: [Signature], Secretary