BEFORE THE STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

80-SBE-14

In the Matter of the Appeal of) MICHAEL J. AND DONNA C. FRANZBLAU)

- For Appellants: Michael J. Franzblau, in pro. per.
- For Respondent: James T. Philbin Supervising Counsel

<u>O P I N I O N</u>

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Michael J. and Donna C, Franzblau against a proposed assessment of additional personal income tax in the amount of \$1,201.39 for the year 1975. During the course of these proceedings the amount has been paid in full: therefore, in accordance with section 19061.1 of the Revenue and Taxation Code we are treating the appeal as an appeal from the denial of a claim for refund.

Appeal of Michael J. and Donna C. Franzblau

Appellants' 1975 federal income tax return was audited during 197'6. The audit resulted in increasing **appellants'** federal income tax liability which was reflected in the Revenue Agent's Report dated November 30, 1976. Thereafter, on December 28, 1977, respondent issued a notice of proposed assessment reflecting the corresponding state adjustments. This notice **was** not protested.

Additional adjustments were made to appellants.' federal income tax liability which were reflected in a Revenue Agent's Report dated November **30**, 1977'. This report was signed by appellants indicating their agreement to the federal adjustments. Once again respondent made the corresponding changes to appellants' state income taz liability which were set out in a notice of proposed assessment dated May 19, 1978. Subsequently, appellants filed this appeal and paid the tax.

Appellants do not attack the federal or state adjustments directly. However, they do argue that the **statute of** limitations had expired when the state assessments were made.

Section 18586 of the Revenue and Taxation Code provides, in part, that "every notice of proposed assessment shall be mailed to the tazpayer within four years after the return was filed." Appellants' 1975 return was d-ue on April 15, 1976. Four years after that date was April 15, 1980. The proposed assessments involved in this appeal were issued on December 28, 1977, and May 19, 1978, Both dates were well within the four year statutory period.'

Appellants also argue that delay on behalf of respondent resulted in excessive interest due.

Initially, we note that the record does not support appellants' attempt to charge respondent with responsibility for any delay in this proceeding. In any event, we have held in a host of prior decisions that interest imposed on an unpaid deficiency by section 18688 of the Revenue and Taxation Code is mandatory. (See, e.g., <u>Appeal of Allan Wh Sha iCal. St. Bd.</u> of Equal., Aug. <u>1., 1974; Appeal o Rut Wertheim Smith</u>, Cal. St, Bd. of Equal., Aug. 3, 1965.) The **interest is** not a penalty but is compensation for the use of the money during the period of the underpayment. (Appeal

Appeal of Michael J. and Donna C. Franzblau

of Audrey C. Jaeqle, Cal. St. Bd. of Equal., June 22, 1976.)

For the reasons set out above, respondent's action in this matter must be sustained.

<u>ORDER</u>

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 on the protest of Michael J. and Donna C. Franzblau against a proposed assessment of additional personal income tax in the amount of \$1,201.39 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of November, **1980**, by the State Board of Equalization, with Members Nevins, Reilly, Dronenburg and Bennett present.

Richard Nevins	, Chairman
George R. Reilly	_, 'Member
Ernest J. Dronenburg, Jr.	, Member
William M. Bennett	, Member
	_, Member