

Appeal of George H. and Evelyn B. Danis

The issue presented is whether respondent properly imposed a penalty for underpayment of estimated tax.

Appellants, who are retired, filed their 1980 personal income tax return in January 1981, showing gross income received from interest, dividends and pensions. Full payment of their stated tax liability accompanied the return. In February 1981, respondent issued a notice imposing a penalty for **underpayment of estimated tax**. Appellants paid the penalty under protest and filed a timely claim for refund. When their claim was denied, appellants filed this appeal.

Appellants do not deny that they were required to file a declaration of estimated tax pursuant to Revenue and Taxation Code section 18415, nor that they failed to make installment payments of estimated tax during the taxable year 1980 as required under Revenue and Taxation Code section 18556. They contend, however, that the penalty should not be imposed because they filed their 1980 return, with full payment of the tax due, before **February 1**, 1981. Their contention is based on instructions which accompanied their state tax forms. Those instructions read, in pertinent part:

(2) Your return as a declaration.--If on or before January 31, 1981, you file your 1980 Form 540 or **540NR** and pay the entire balance due, then you need not--

file a declaration of estimated tax nor make an estimated tax payment that would have been due on or before January 15, 1981.

Estimated tax payments are required to be made quarterly, beginning in the quarter in which the taxpayer becomes subject to the provisions requiring such payments. (Rev. & Tax. Code, § 18556.) If estimated payments are not timely made, a penalty is imposed for the amount of the underpayment until the payments are made current. (Rev. & Tax. Code, § **18685.05**.) The only situation to which the quoted instructions apply is that in which liability for estimated tax payments first occurs during the taxable year after September 15 of that year. (Rev. & Tax. Code, § 18415, subd. (f).)

Appellants make no allegation that they were first subject to the estimated tax payment requirements after September 15, 1980. Therefore, the provisions of

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section 18415, subdivision (f), do not apply to them, and the penalty was properly imposed.

Although we agree with appellants that the quoted portion of the instructions, read alone, may be ambiguous, respondent is not estopped from assessing this type of penalty because of the taxpayer's reliance on ambiguous or erroneous instructions or information. (Appeal of Marvin W. and Iva G. Simmons, Cal. St. Bd. of Equal., July 26, 1976; Appeal of Norman L. and Penelope A. Sakamoto, Cal. St. Bd. of Equal., May 10, 1977.) **The fact that** appellants had done the same for several years and had not been previously questioned on the practice by either the Internal Revenue Service or the Franchise Tax Board is irrelevant to the determination for 1980.

The action of the Franchise Tax Board is, therefore, sustained.

