

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of )  
CHRIS A. HUELTON AND FLORENCE K.)  
SUTTER )

For Appellants: Joseph F. Walsh  
Attorney at Law

For Respondent: John A. Stilwell, Jr.  
Counsel

O P I N I O N

This appeal is made pursuant to section 18646 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the petitions of Chris A. Huelton and Florence K. Sutter for reassessment of jeopardy assessments of personal income tax and penalties against each of them in the total amounts of **\$10,904.00** and **\$2,783.00** for the year 1.978 and the period January 1, 1979, to May 4, 1979, respectively.

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The issue presented is whether the jeopardy assessments in question became final prior to the filing of this appeal, thereby depriving this board of jurisdiction to consider the merits of this case.

On May 8, 1979, respondent **issued separate** jeopardy assessments against appellants as indicated above. Thereafter, timely petitions for reassessment were filed by each appellant which, by notice to Florence Sutter dated June 11, 1980, and by notice to Chris Hueldon dated August 15, 1980, were denied by respondent. By letter **dated** September 15, 1980, appellants filed this appeal. However, the envelope containing the appeal is postmarked September 24, 1980, and the appeal was received by this board on September 26, 1980. Respondent contends that this board lacks jurisdiction to hear this appeal since, **pursuant** to section 18645 of the Revenue and Taxation Code, the notices denying appellants' petitions became final before this appeal was filed. On the other hand, appellants contend that, for various reasons, there was reasonable cause for the late filing of the appeal.

Revenue and Taxation Code section 18645 provides as follows:

If a petition for reassessment is filed, **the** Franchise Tax Board shall reconsider the jeopardy assessment and., if the taxpayer has so requested in his petition, the Franchise Tax Board shall grant him or his authorized representative an oral hearing. The Franchise Tax **Board's** action upon the petition **for** reassessment is final **upon** the expiration of 30 days from the date when it mails notice of its action to the taxpayer, unless within that 30-day period the taxpayer appeals in writing from the action of the Franchise Tax Board to the board.

The pertinent regulation adds the following:

An appeal will be timely if it is mailed to or received at the office of the board within the time specified by the particular statute under which the appeal is taken. In the absence of other evidence, the postmark date will be considered as the mailing date. If the last **day** for making an appeal falls on a Saturday, Sunday or holiday, the time shall be extended to the next business day. (Cal. Admin. Code, tit. 18, reg. 5023.)

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As indicated above, the notice denying Florence Sutter's petition for reassessment was dated June 11, 1980, while the notice of denial for Chris Hueldon was dated August 15, 1980. Appellants do not allege that these notices were mailed on any other date than those indicated in each notice, i.e., June 11, 1980, and August 15, 1980, respectively. Thus, in order for the appeal to this board to have been timely filed, within the meaning of Revenue and Taxation Code section 18645 and regulation 5823, cited above, the postmark date of the appeal of Florence Sutter must have been on or before July 11, 1980, while such date of the appeal of Chris Hueldon must have been on or before September 15, 1980, as September 14, 1980, fell on a Sunday. As indicated above, the postmark date for the appeal was September 24, 1980.

Nevertheless, appellants contend that there was reasonable cause for the late filing. First, appellants argue that respondent "orally waived reliance upon the denial letter when it continued to negotiate in good faith with counsel for Mrs. Sutter. . . ." and, in fact, made a refund of \$7,677.55 to Florence Sutter on July 28, 1980, while her "denial letter" had been dated June 11, 1980. Appellants' first argument is without merit. The evidence in the record indicates that, pursuant to Revenue and Taxation Code section 48643, these negotiations centered only upon the type of security required to stay the jeopardy assessment. Indeed, the July 28, 1980, payment denoted as a "refund of the subject cash bond\*" did not affect the underlying tax assessment, but merely changed the collection procedure for that assessment. As such, this refund or the negotiations leading up to that refund could in no way negate the position reflected in respondent's June 11, 1980, letter (i.e., the so-called "denial letter") and, accordingly, respondent has made no waiver,

Next, appellants argue that Chris Hueldon changed attorneys after the denial of his protest by respondent and that the change was reasonable cause for filing late. Again, this contention is without merit since Revenue and Taxation Code section 18645 contains no provisions for mitigation due to reasonable cause,

Therefore, pursuant to Revenue and Taxation Code section 18645, the assessments became final prior to the filing of the appeal to this board. Accordingly, appeal to this board is foreclosed since we lack jurisdiction. (Appeal of Frank Edward Hess and Florence Hess, Cal. St. Bd. of Equal., Feb. 17, 1959.)

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## 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 18595 of the Revenue and Taxation Code, that the appeal of Chris A. Hueldon and Florence K. Sutter from the action of the Franchise Tax Board in denying their petitions for reassessment of jeopardy assessments of personal tax and penalties against each of them in the total amounts of \$10,904.00 and \$2,783.00 for the year 1978 and the period January 1, 1979, to May 4, 1979, respectively, be and the same is hereby dismissed for want of jurisdiction.

Done at Sacramento, California, this 14th day  
of October , 1982, by the State Board of Equalization,  
**with Board Members Mr. Bennett, Mr. Collis,** Mr. Dronenburg  
and Mr. Mevins present,

William M. Bennett, Chairman  
Conway H. Collis, Member  
Ernest J. Dronenburg, Jr., Member  
Richard Nevins - - -, Member  
\_\_\_\_\_, Member