

**BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA**

**In the Matter of the Appeal of }
ANDRE L. AND DOROTHY C. HOBSON }**

**For Appellants: Andre L. Hobson ,
in pro. per .**

**For Respondent: Kathleen M. Morris
Counsel**

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Andre L. and Dorothy C. Hobson for refund of a penalty and interest in the total amount of \$502.17 for the year 1977.

Appeal of Andre L. and Dorothy C. Hobson

The question presented by this appeal is whether respondent properly imposed a penalty for failure to timely file and interest on an amount of tax not timely paid.

Appellants, whose taxable year is the calendar year, did not file their 1977 California joint personal income tax return by the required filing date. Mr. Hobson wrote a letter to the Franchise Tax Board on April 14, 1978, explaining that he had not received his California tax forms and requesting that the Franchise Tax Board send them to him. The letter also stated, "Since it is too late to get the forms before filing I enclose a check for \$1,400.00 as a guess regarding my assessment."

Appellants state that they received the tax forms in July 1978. However, they did not file their 1977 return until November 21, 1978, after receiving a notice and demand from respondent. The notice stated that a 25 percent delinquent-filing penalty was due as well as interest at 6 percent per year on the delinquent amount of tax. Appellants' return showed tax due of \$3,385 and previous payment credits of \$1,550, leaving a balance due of \$1,835. A check in the amount of \$1,900 was sent with the return to cover the tax assessment and accrued interest. Appellants later received a billing from respondent for penalties and interest due. This first billing was miscomputed and was later revised, indicating a remaining liability for the penalty and interest of \$502.17. Appellants paid this amount and filed a claim for refund. The denial of that claim led to this appeal.

Revenue and Taxation Code section -18681, subdivision (a), provides:

If any taxpayer fails to make and file a return required by this part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction thereof elapsing between the due date of the return and the date on which filed, but the total penalty shall not exceed 25 percent of the tax. The penalty so added to the tax shall be due and payable upon notice and demand from the Franchise Tax Board.

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The normal due date for appellants' 1977 tax return was April 17, 1978 (Rev. & Tax. Code, § 18432; former Cal. Admin. Code, tit. 18, reg. 18431-18433 (a) [amendment and renumbering to present reg. 18433.1, subd. (a), filed October 6, 1978, effec. thirtieth day thereafter (Reg. 78, No. 40)]). Although appellants contend that a request for extension was implicit in their request for tax forms, no direct request was actually made and no extension was granted. Because no extension was granted, and appellants' return was not filed until seven months after the normal due date, the penalty was properly imposed unless appellants can show that their failure to timely file was due to reasonable cause and not due to willful neglect. To establish reasonable cause, appellants must demonstrate that their failure to file occurred despite the exercise of ordinary business care and prudence. (Appeal of David and Hazel Spatz, Cal. St. Bd. of Equal., May 4, 1970.)

Appellants contend that their failure to timely file was due to reasonable cause because they did not receive tax forms from the Franchise Tax Board and were unable to obtain them elsewhere when they realized this. However, the failure to receive or secure tax forms does not excuse or modify the filing requirements, (Appeal of Thomas P.E. and Barbara Rothchild, Cal. St. Bd. of Equal., March 27, 1973; Rev. & Tax. Code, § 18431.) Although appellants did request the necessary forms when they were unable to obtain them, they did not send their request until three days before the returns were due. We do not believe that appellants' actions constituted the exercise of ordinary business care and prudence. We find, therefore, that their failure to file was not due to reasonable cause.

We have held in numerous cases that the imposition of interest on an unpaid amount is mandatory pursuant to Revenue and Taxation Code section 18686. (See, e.g., Appeal of James W. and Margaret R. Henderson, Cal. St. Bd. of Equal., Feb. 6, 1980; Appeal of Arthur H. and Betty R. Muller, Cal. St. Bd. of Equal., May 9, 1979.) Appellants contend, however, that they have paid the interest imposed twice and we agree with them. Appellants have made payments for 1977 of \$1,550.00 (estimated payments), \$1,900.00 (sent with return to cover deficiency and interest), and \$502.17 (paid pursuant to demand for penalty and interest), totaling \$3,952.17. Their tax liability for 1977 was \$3,385.00 and the penalty and interest liability billed by respondent was \$502.17, for a total liability of \$3,887.17. Therefore, appellants have overpaid by \$65.00 and this amount must be refunded to them.

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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,

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 Andre L. and Dorothy C. Hobson for refund of a penalty and interest in the total amount of \$502.17 for the year 1977 be modified to reflect a refund in the amount of \$65.00.. In all other respects, the action of the Franchise Tax Board i's hereby sustained.

Done at Sacramento, California this day 17th of November , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

_____, Member