

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the **Matter** of the Appeal of }  
ROGER W. SLEIGHT )

For Appellants: Roger W. Sleight,  
in pro. per.

For Respondent: Terry Collins  
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 Roger W. Sleight for refund of a penalty in the amount of \$359.67 for the year 1980.

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Appellant requested and received an **extension** of time in which to file his **1980** California personal income tax return. The extension request showed an expected tax liability of \$9,540 and \$5,040 in previously paid estimated tax. The balance of the expected tax, \$4,500, was submitted with the request for extension. Appellant's return was ultimately filed on September 21, 1981, which was within the extension period. His return, which reflected a total tax liability of \$14,264, was accompanied by a payment of \$4,724.

Upon review, respondent assessed a late payment penalty of \$359.67 pursuant to Revenue and Taxation Code section 18684.2. Appellant paid the assessed penalty and filed the subject claim for refund, which was subsequently denied by respondent. The propriety of respondent's action is now **before** us in this appeal.

Appellant challenges the imposition of the late payment penalty, arguing that the difficulty in estimating his 1980 tax liability constituted reasonable cause for the underpayment. Specifically, appellant asserts that as of April 15, **1981**, he was unable to compute the gain to be recognized from the disposition of certain real property (hereinafter the "Jackson Street property") transferred in 1980 because of the complexity of the tax law and because of the lack of the relevant information upon which to compute the tax.

While the record is far from clear, it appears that appellant entered into a contract to sell or exchange the Jackson Street property on May 1, 1980. As part of that agreement, the parties apparently agreed to cooperate in an attempt to consummate a tax-free exchange utilizing a deferred two-party exchange commonly known as a Starker exchange. (See Starker v. United States, 602 F.2d 1341 (9th Cir. 1979).) **If** the parties had been successful in satisfying the rigid and technical requirements of Starker, appellant contends that no gain would have been recognized by him on the exchange of the subject property. (See Rev. & Tax. Code, § 18081; Comment, Like-Kind Exchanges After Starker: Implications for California Revenue & Taxation Code Section 18081, 12 Pacific L.J. 1147 (1981).) **The** transaction which was anticipated to satisfy the tax-free requirements of Starker was consummated in October of 1980. Appellant contends that "several months later" it was determined that that transaction would not qualify as a tax-free exchange under Starker and, accordingly, gain on the disposition of the **Jackson** Street property had to be recognized. Moreover,

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appellant alleges that on April **15, 1981**, he lacked the relevant records to compute the amount of gain. Accordingly, appellant argues that as of April 15, 1981, he was unable to compute the gain to be recognized from the disposition of the Jackson Street property.

In pertinent part, section 18684.2 provides as follows :

(a) In case of failure to pay the amount shown as tax on any return specified in this part on or before the date prescribed for payment of such tax, . . . unless it is shown that such failure is due to reasonable cause and not due to willful neglect, a penalty is hereby imposed consisting of: (1) 5 percent of the total tax unpaid (as defined in subdivision (c)), and (2) an amount computed at the rate of 0.5 percent per month of the "remaining tax" (as defined in subdivision (d)) for each month during which the tax is unpaid (not exceeding 36 months).

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(c) . . . [T]otal tax unpaid means the amount of tax shown on the return reduced by: (1) the amount of any part of the tax which is paid on or before the date prescribed for filing the return, and (2) the amount of any credit against the tax which may be claimed upon the return.

(d) . . . "[R]emaining tax" means total tax unpaid reduced by the amount (if any) of any payment of the tax. (Emphasis added.)

Section 18551, which is applicable to appellant, provides as follows:

The tax imposed under this part shall be paid on the fifteenth day of April following the close of the calendar year, or, if the return is made on the basis of a fiscal year, on the fifteenth day of the fourth month following the close of the fiscal year.

Finally, while respondent is statutorily authorized to grant reasonable extensions of time for the filing of a return (Rev. & Tax. Code, § 18433, subd. (a)), the

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granting of such an extension does not operate to extend the time for the payment of any tax due. (Cal. Admin. Code, tit. 18, reg. 18433.1, subd. (b)(6).)

Since appellant failed to pay \$4,724 of his total personal income tax liability for the year in issue until September 21, 1981, respondent's imposition of the penalty for late payment of tax was proper, unless such untimely payment was due to **reasonable cause** and **not** due to willful neglect. Appellant bears the burden of proving that both of those conditions existed. (Rogers Hornsby, 26 B.T.A. 591 (1932); see Appeal of Telonic Air, Inc., Cal. St. Bd. of Equal., May 4, 1978.) In order to establish reasonable cause, the taxpayer must show that his failure to timely pay the proper amount of tax **occurred** despite the exercise of ordinary business care and prudence. (See Sanders v. Commissioner, 225 F.2d 629 (10th Cir. 1955), cert. den., 350 U.S. 967 [100 L.Ed. 8391 (1956); Appeal of Citicorp Leasing, Inc., Cal. St. Bd. of Equal., Jan. 6, 1976; Appeal of Loew's San Francisco Hotel Corp., Cal. St. Bd. of Equal., Sept. 17,

Section 18684.2 is, insofar as relevant to this discussion, the substantive counterpart to section 25934.2, which constitutes part of the Bank and Corporation Tax Law.' The imposition of the penalty imposed **under the latter** section was upheld in the Appeal of Cerwin-Vega International, decided August 15, 1978. In that case, the taxpayer, a domestic international sales corporation, was unable, **because** of federal law, to resolve certain accounting problems until six months after the close of its first fiscal year. In holding that the penalty was properly assessed, we concluded that such difficulties did not constitute reasonable cause for failure to comply with the applicable law. The record of this appeal presents much less compelling evidence of reasonable cause,

Appellant has failed to support his assertion that he was unable to compute the gain to be recognized on the disposition of the subject property by April 15, 1981. All the events which would determine the tax treatment of the disposition had occurred by October of 1980. Nevertheless, appellant contends that it took "several months" to determine that gain had to be **recognized** in 1980. **However**, appellant has introduced no evidence indicating what, if any, difficulty-caused this delay in computing the gain to be recognized. The mere fact that appellant apparently did not compute the gain until September of 1981 does not constitute reasonable

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cause for the late payment of his 1980 tax liability.  
(Appeal of M. B. and G. M. Scott, Cal. St. Bd. of Equal.,  
Oct. 14, 1982.) The alleged difficulty encountered by  
appellant in determining his income with exactitude does  
not negate the requirement that he make payments based  
upon a reasonably accurate estimate of his tax liability.  
(See Cal. Admin. Code, tit. 18, reg. 18433.1, subd. (c).)

Our conclusion that there was no reasonable  
cause for appellant's failure to pay the tax when due  
obviates the necessity of considering whether such  
failure was due to willful neglect.

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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 Roger W. Sleight for refund of a penalty in the amount of \$359.67 for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of October, 1983, by the State Board of Equalization, with Board **Members** Mr. Bennett, **Mr.** Collis, **Mr.** Dronenburg, **Mr.** Nevins and Mr. Harvey present.

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

\*For Kenneth Cory, per Government Code section 7.9