



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
J. RAY RISSE)

Appearances:

For Appellant: Albert S. White
Certified Public Accountant

For Respondent: Terry Collins
Counsel

O P I N I O N

This appeal is made pursuant to section 19058 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of J. Ray Risser for refund of personal income tax in the amount of \$306.13 for the year 1980.

Appeal of J. Rav Risser

The questions presented for decision are: (1) whether the imposition of a penalty for underpayment of estimated taxes was proper; and (2) whether the imposition of a penalty for late payment of tax was proper.

Appellant filed a timely 1980 California personal income tax return showing a tax liability of \$3,660. Appellant claimed a credit for a \$750 payment of estimated tax and showed a balance due of \$2,910. No payment of the balance due accompanied the return. Appellant paid the balance due on May 22, 1981.

Respondent reviewed appellant's tax liability and payment record and assessed the following penalties:

1)	Underpayment of estimated taxes	\$142.53
2)	Late payment of taxes	158.81
	Total	<u>\$301.34</u>

Appellant paid the penalties, plus \$4.79 interest, and filed a claim for refund.

Appellant does not dispute respondent's computation of the penalties **but** requests that the penalties be cancelled for the following reasons. Appellant is elderly and claims that he became confused and unintentionally failed to send a check for the balance due on his 1980 taxes. To further add to his confusion, appellant was in the process of filing an amended return for 1979. The amount of refund was approximately equal to the 1980 balance due, and appellant could not remember if the 1979 refund was to be remitted to him or credited to his future tax liability.

While we sympathize with appellant's unintentional error, these facts do not form a basis for granting relief from the penalties. The penalty for underpayment of estimated taxes is imposed by Revenue and Taxation Code section 18685.05. That statute provides that a penalty "shall be added to the tax." The statute contains no language excepting a taxpayer from the penalty upon a showing of reasonable cause. In Appeal of Alden Schloss, decided by this board on October 27, 1971, we held that the penalty is mandatory and could not be cancelled based on a showing of reasonable cause. At the time we decided Alden Schloss, the penalty for underpayment of estimated taxes was imposed by Revenue and Taxation Code section 18685.1, which also contained no language of exception. The penalty for underpayment of estimated taxes imposed by section 18685.05 is also mandatory and may not be cancelled based upon a showing of reasonable cause.

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The penalty for late payment of taxes is imposed by section **18684.2** of the Revenue and Taxation Code. That section provides that the penalty may be cancelled if "it is shown that such failure is due to reasonable cause and not due to willful neglect." While we believe that appellant's failure to remit the balance due **on his** 1980 tax liability was an oversight, that alone does not constitute reasonable cause. We feel that respondent's action in this matter must be sustained.

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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 **19060** of the Revenue and Taxation **Code**, that the action of the Franchise Tax Board in denying the claim of J. Ray Risser for refund of personal income tax in the amount of **\$306.13** for the year **1980**, **be** and the same is hereby sustained.

Done at Sacramento, California, this 28th day
Of February , 1984, by the State Board of Equalization,
with Board **Members** Mr. Nevins, **Mr.** Dronenburq, Mr. **Collis**,
Mr. Bennett and Mr. Harvey present.

Richard Nevins, Chairman
Ernest J. Dronenburs, Jr., Member
William M. Bennett, Member
Walter Harvey*, Member
_____, Member

*For Kenneth Cory, per Government Code section 7.9