



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
))
THOMAS P. E. AND BARBARA ROTHCHILD)

Appearances:

For Appellants: Thomas P. E. Rothchild, M.D.,
 in pro. per.

For Respondent: Richard C. Creeggan
 Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Thomas P. E. and Barbara Rothchild for refund of personal income tax, penalty, and interest in the total amount of \$401.08 for the year 1969.

During the years 1967 and 1968 appellants Thomas P. E. Rothchild and Barbara Rothchild resided together in San Jose, California, where he maintains his medical practice. In those years, appellants filed joint California income tax returns on which they reported estimated tax payments in the respective amounts of \$368 and \$1,326.

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In July 1969 appellants separated and he moved from their home while she continued to reside there. Respondent Franchise Tax Board mailed appellants' 1969 estimated tax bill to the address shown on appellants' joint returns filed for the immediately preceding years.

Appellants, still legally married at the close of 1969, filed a joint return for that year in which they claimed a credit for the 1969 estimated tax payment in the amount of \$1,117. In addition, appellants claimed a special tax reduction credit of \$200 as authorized for the year 1969 under section 17065 of the Revenue and Taxation Code.

In processing their 1969 return, respondent discovered that appellants had filed no declaration of estimated tax for 1969, and the \$1,117 estimated tax payment claimed on their return had never in fact been made. Upon discovery of this fact, respondent assessed appellants a total sum of \$1,518.08. This amount is comprised of the \$1,117 tax deficiency, the \$200 special tax credit disallowed for appellants' failure to comply with section 17065, subdivision (c), of the Revenue and Taxation Code, interest of \$57.42 on the preceding two amounts, interest of \$30.48 on the underpayment of estimated tax, a penalty of \$111.70 which is equal to 10 percent of the underpayment of estimated tax as required by section 18685.1 (now section 18685.01) of the Revenue and Taxation Code, and interest on the penalty in the amount of \$1.48.

Appellants paid the above amount and thereafter filed a timely claim for refund of \$401.08. The claim, filed and signed jointly, sought the elimination of the penalty and interest charges and requested that the special tax reduction credit of \$200 be allowed.

Initially, Dr. Rothchild claimed in defense to the nonpayment of the estimated tax that the bill sent by respondent was never forwarded to him by his wife. Subsequently, after conferring with his wife and obtaining her signed affidavit, he alleged that neither of them had been sent a bill. Further,

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Dr. Rothchild claims, when their accountant made up the 1969 return it was assumed that the 1969 estimated tax liability of \$1,117 had been paid and therefore the accountant credited appellants with that amount on their 1969 return. Appellant claims that he failed to notice that error when he signed the return.

The two issues before this board are:

(1) whether the penalty for the underpayment of the estimated tax applies; and

(2) whether appellants are entitled to the special tax credit for 1969.

Before addressing the above two issues, it should be noted that the statutory authority for the assessment of interest charges in this case comes from a different source than the authority for the assessing of penalties. The authority for the assessment of interest on the underpayment of estimated tax is section 18685.3 (now section 18685.03) of the Revenue and Taxation Code. The authority for the assessment of interest on the tax deficiencies as noted is section 18686. Unlike the statutes to be discussed hereafter, there is no defense of due care to these interest assessments. Once it is admitted, as appellants have done here, that the proper payments were not made on or before the date prescribed for payment, the imposition of interest is mandatory. (See Appeal of Ruth Wertheim Smith, Cal. St. Bd. of Equal., Aug. 3, 1965.)

Respondent now concedes that appellant is entitled to a refund of the interest incorrectly charged on the \$111.70 penalty, which amounts to \$1.48. Dr. Rothchild's primary defense against the imposition of the penalty of \$111.70 is either that his wife failed to forward the estimated tax bill to him when it was mailed to her home or, as he claimed later, the estimated tax bill was never received by either appellant. Neither of these contentions aids appellants.

Section 18431 of the Revenue and Taxation Code specifically deals with the contention that failure to receive a tax bill is a defense to nonpayment. It states

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in relevant part: "... Failure to receive or secure the form does not relieve any taxpayer from making any return, declaration, statement or other document required."

With reference to an almost identical contention, this board has ruled:

... Respondent's alleged failure to supply a timely return form is of little consequence. Appellant's obligation to file a return arises from the receipt of income, and is not dependent upon receiving notice from respondent, ...When appellant did not receive a timely return form, due care would at least demand the sending of an inquiry to the Franchise Tax Board. (Anneal of Normandy Investments Ltd., Cal. St. Bd. of Equal., Sept. 12, 1968.)

For years ending on or before November 30, 1972, section 18685.1 (now section 18685.01) of the Revenue and Taxation Code imposes a penalty for underpayment of estimated tax unless it is shown that such underpayment is due to reasonable cause and not due to willful neglect. Appellants contend that it is unfair to assess a penalty on the estimated tax because they were unaware the estimated tax was due. Yet in the two previous years appellants paid substantial estimated taxes. It is apparent that appellants knew of their statutory obligation regarding the estimated tax and the approximate time that it was due. Under these circumstances, this board cannot hold that appellants had reasonable cause to ignore their 1969 estimated tax liability.

As to the second issue, section 17065, subdivision (c), of the Revenue and Taxation Code provides that the special tax credit appellants seek to claim is available only if the taxpayer pays the entire amount of his net tax liability on or before the due date of the return. That code section excuses late payment due to reasonable cause.

Dr. Rothchild has stated that he simply signs his tax forms after his accountant prepares them and,

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thus, he did not notice the mistaken inclusion of the estimated tax payment. Without belaboring the point, it is clear that a failure to read **one's** own tax form is not the type of reasonable cause which would excuse underpayment under the statute.

For all of the above reasons, we must therefore sustain respondent's action in this matter.

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 claims of Thomas P. E. and Barbara Rothchild for refund of personal income tax, penalty, and interest in the total amount of \$401.08 for the year 1969 be and the same is hereby modified in that appellants are entitled to a refund of \$1.48 in accordance with the concession of the Franchise Tax Board. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 27th day of March, 1973, by the State Board of Equalization.

William W. Bennett, Chairman
John W. Lynch, Member
Robert J. Kelly, Member
Paul J. Ryan, Member
_____, Member

ATTEST: *W. W. Dunlop*, Secretary