BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ARDEN K. AND DOROTHY S. SMITH)

For Appellants: Arden K. Smith, in pro.' per.

For, Respondent: Crawford H. Thomas
Chief Counsel

Marvin J. Halpern
Counsel

OPINION

This' appeal is made pursuant to-section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on. the protest of Arden K. and Dorothy S. Smith against, a proposed assessment of additional personal income tax in the amount of $148. 74 for the year 1968.

We must decide whether the state should be estopped from asserting a proposed additional assessment, where taxpayers' use of an obsolete income averaging schedule provided by the Franchise Tax Board resulted in a deficiency.

Appellants claimed deductions for personal exemptions in the amount of $4,200 in their personal income tax returns for each of the years 1964, 1965, and 1966. At least in part because of these deductions, their taxable income for those years was relatively low. By 1968, however, their gross income had increased sharply, and in order to mitigate the resulting increase in tax liability appellants elected to average their income for that year.

Revenue and Taxation Code sections 18241 through 18246 set forth the rules for income averaging. These sections provide essentially that eligible individuals may determine their tax for a given year (the "computation year") by reference to their "base period income" for the previous four years. "Base period income" for any year had been defined by subdivision (c)(2) of section 18242 as the taxable income for such year with certain adjustments not relevant here. In 1967, however, that subdivision was amended to add the requirement that the taxable income for any base period year beginning prior to January 1, 1967, must be increased by the amount of deductions for personal exemption claimed for such year.

In computing their base period income on their 1968 return, appellants used Schedule G of Franchise Tax Board Form 540, which had been supplied to them by respondent. This schedule had been printed in 1966 and thus did not reflect the amendment to subdivision (c)(2) of section 18242. It provided no space for taxpayers to add deductions for personal exemptions to their taxable incomes for base period years. Furthermore the instruction booklet which accompanied Form 540 did not mention the new computation method, even though several other changes in the law were noted. Appellants accordingly did not include their previous deductions in computing base period income. Respondent noticed this in a routine audit of appellants' return, recomputed the base period income, and issued a proposed assessment of additional tax. Appellants protested the assessment, and have appealed from respondent's subsequent denial of that protest.

The amendment to subdivision (c)(2) of section 18242 became effective on December 12, 1967. (Stats. 1967, 2d Ex. Sess., ch. 3, § 2, p. 6.) It therefore applies to the taxable year 1968, and appellants on their 1968 return should have included the amounts claimed as personal exemptions in 1964, 1965, and 1966 in computing

their base period income. (Appeal of Glen A. Horspool, Cal. St. Bd. of Equal., March 27, 1973.) Appellants do not contest this conclusion, but argue rather that since they accurately and in good faith completed the computation schedule provided by respondent; they should not now be held liable for any errors caused by the use of that form. The issue before us is whether these facts require that the state be estopped from asserting a deficiency. We hold that they do not.

As a general rule estoppel will be invoked against the state in tax matters only where the case is clear and the injustice great. (United States Fidelity and Guaranty Co. v. State Board of Equalization, 47 Cal. 2d 384; 389 [303 P. 2d 1034].) We have applied this rule in cases where taxpayers understated their liability on their returns in reliance on erroneous rulings or statements by government officials. (Appeal of Tirzah M.-G. Roosevelt, Cal. St. Bd. of Equal., May 19, 1954.) The rationale is simply that estoppel based on such misstatements relieves the taxpayer of his obligation to pay tax and in effect creates an exemption unauthorized by statute. Since the allowance of an exemption is the sole prerogative of the Legislature, the actions of revenue officers will be permitted to have this effect only where grave injustice would otherwise result. (See Market Street Railway Co. v. State Board of Equalization, 137 Cal. App. 2d 87, 100 [290 P. 2d 20].)

We do not find in this case the type of "injustice" which would warrant estoppel. Although appellants were misled by the obsolete form and had no notice of the changed computation method, this alone is not sufficient. Detrimental reliance must also be shown. (Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974.) Since appellants received the schedule and instruction booklet in 1969, there could have been no such reliance in prior years, when all the facts relevant to the computation of their base period income occurred. We therefore conclude that respondent is not estopped to assess the deficiency.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Appeal of Arden K. and Dorothy S. Smith

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Arden K. and Dorothy S. Smith against a proposed assessment of additional personal income tax in the amount of $145.74 for the year 1968, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of October, 1974, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____ Secretary