



Appeal of Robert W. and Nancy F. Ryan

deficiency assessed for 1971, under section 19061. 1 of the Revenue and Taxation Code we are treating this as an appeal from the action of the Franchise Tax Board in denying a claim for refund of personal income tax in the amount of \$236.00 for the year 1971.

The issue presented is whether appellant Robert W. Ryan filed a timely 1971 California personal income tax return.

Mr. Ryan's 1971 return was postmarked April 21, 1972, and received by respondent on April 22, 1972. In view of the late filing, respondent issued a proposed assessment against Mr. Ryan which reflected the denial of the special tax credit and the imposition of penalties for late filing.

On March 20, 1974, appellants filed their joint return for 1973 and claimed a \$236.00 refund. Since appellants had not paid the 1971 deficiency against Mr. Ryan, which amounted to \$230.00, including interest, on March 20, 1974, respondent offset appellants' 1973 overpayment against the 1971 deficiency. Appellants protested this action. They contend that Mr. Ryan's 1971 return was timely filed. Mrs. Ryan states that she mailed her husband's 1971 return, with check attached, on April 15, 1972, at the Woodland Hills Post Office. The envelope which contained the return was postmarked April 21, 1972.

In 1971 section 17069, subdivision (b), of the Revenue and Taxation Code specifically required that the entire amount of the net tax liability be paid on or before the due date of the return in order for a taxpayer to qualify for the special tax credit. In order to prevail, appellants must prove that Mr. Ryan's 1971 tax return was timely mailed. This is a difficult burden because the envelope containing the return was postmarked April 21, 1972. In the absence of other evidence, appellants' self-serving assertions of timely mailing are not sufficient to establish timely filing. Under the circumstances, we must sustain the action of respondent in denying the special tax credit and imposing late filing penalties.

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,

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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 Robert W. and Nancy F. Ryan for refund of personal income tax in the amount of \$236.00 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of March, 1976, by the State Board of Equalization.

Sullivan W. Berman, Chairman
Paul D. Berman, Member
George H. Hill, Member
_____, Member
_____, Member

ATTEST: W. W. Dwyer, Executive Secretary