

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of       )  
NEIL B. AND STELLA BERBOTH       )

For Appellants:       Neil B. Berboth, in pro. per.

For Respondent:       James W. Hamilton  
                          Acting Chief Counsel

John A. Stilwell, Jr.  
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 Neil B. and Stella Berboth against a proposed assessment of additional personal income tax in the amount of \$117.52 for the year 1971.

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The issue to be decided is whether appellants were eligible for the 1971 special tax credit provided by former section 17069 of the Revenue and Taxation Code.

Although appellant Neil B. Berboth and his wife, Stella, were living separately in 1971, they filed a joint California personal income tax return for that year on April 9, 1972. While their total earnings amounted to \$36,330 and the return disclosed a tax liability, no remittance accompanied the return. In computing their tax liability, appellants claimed the 20 percent special tax credit. On December 21, 1972, and March 22, 1973, Mr. Berboth made payments of \$940.30 and \$5.38, respectively. Respondent determined that appellants were not entitled to the special tax credit because the tax liability had not been paid on or before the due date of the return. Respondent's action on the protest against the resulting proposed assessment gave rise to this appeal.

In 1971 section 17069, subdivision (b) of the Revenue and Taxation Code provided, in part:

In order to claim the tax credit allowed under subdivision (a), the taxpayer must first pay the entire amount of the net tax. . . on or before the due date of the return. . . unless the taxpayer's failure to pay or file a timely return was due to reasonable cause and not due to willful neglect. (Emphasis added. )

Appellant concedes that payment was not made on or before the due date. Nevertheless, he claims he is entitled to the 20 percent special tax credit because, allegedly, his failure to pay the tax on time was due to reasonable cause and not due to willful neglect. Specifically, he alleges that he was unemployed and simply could not pay the tax on the due date.

To elaborate on his position, appellant points out that he was employed by Overseas National Airways, Inc. as an officer and received a salary of \$26,950 for the period extending from January 1, 1971, through September 30, 1971. On the latter date

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his regular employment with Overseas was terminated and appellant was unemployed until April of 1972. During those six months of unemployment, appellant allegedly had basic living costs approximating \$3,300 and he expended about \$5,250 in job hunting. During this same period he received \$600 from Overseas for consultation services and \$275 in unemployment compensation from the State of California. Appellant alleged that he+ had \$5,459 in his checking account on September 30, 1971, while having obligations amounting to over \$4,000. In addition, he had a bank loan in the amount of \$42,703. Under the circumstances, appellant alleges that he was able to meet his living expenses and his job seeking expenditures only by increasing his credit card obligations and by getting a few personal loans. On August 21, 1971, appellant gained permanent employment with his present employer, World Airways, Inc. Because of actions brought by his creditors, however, appellant was forced into bankruptcy in July of 1973.

The burden of proof on a challenge to a determination of a taxing agency is on the taxpayer. (Welch v. Helvering, 290 U. S. 111 [78 L. Ed. 212]. ) In order for the appellants to prevail in the instant appeal, they must show that their late payment of self-reported 1971 California personal income tax liability was due to reasonable cause and not due to willful neglect. (Rev. & Tax. Code, § 17069, subd. (b). ) In Rene R. Bouche, 18 T. C. 144 (1952), the court stated:

Many, if not most, taxpayers have, at times, found themselves without ready cash to pay their taxes. This fact is not reasonable cause for not filing the estimate and paying the tax due thereon. True, such situations may require sacrifice, but the Government exists only by the sacrifices of the citizens. Taxes may seem oppressive and in derogation of absolute personal right, but taxes must be paid if governments are to endure. We are wholly unimpressed by petitioner's reasons for failure to file his estimated tax and pay the installment due. See Albert T. Felix, 12 T. C. 933; Carl M. Stephan, 16 T. C. 1157. Taxpayers may

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not, in marshalling their debts, consign their Federal tax obligations to the bottom of the list. The dignity of the Government's claims entitle it, rather, to top priority. (18 T. C. at 148. )

In view of the record before us, we do not find that appellant gave "top priority" to his obligations. He had substantial income and he managed to make arrangements to pay his other obligations. Consequently, we must conclude that respondent acted correctly in disallowing the special tax credit because appellant failed, willfully and without reasonable cause, to pay his full net tax liability on or before the due date.,

ORDER

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Neil B. and Stella Berboth against a proposed assessment of additional personal income tax in the amount of \$117.52 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1976, by the State Board of Equalization.

*William B. Bryant*, Chairman  
*George J. Felt*, Member  
*Robert A. Brown*, Member  
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\_\_\_\_\_, Member

ATTEST: *W. W. Donlop*, Executive Secretary