

Appeal of Audrey C. Jaegle

Appellant filed a timely California personal income tax return for 1973 in which she claimed a refund of \$286.62. On the return, appellant indicated that she was filing as a surviving spouse and that her spouse died in 1954. However, in calculating her tax liability, appellant utilized the tax rates applicable to a taxpayer filing under the head of household status.

During a desk audit of appellant's 1973 return, respondent's auditor determined that, as a surviving spouse, appellant was entitled to a refund in the amount of \$448.00, rather than the \$286.62 claimed. Accordingly, a refund check in the amount of \$448.00 was sent to appellant. The record on appeal contains a copy of the check and indicates that it was cashed by appellant in May 1974.

Subsequently, upon reexamination of appellant's 1973 return, respondent determined that appellant was not entitled to file as a surviving spouse.^{1/} Respondent then sent to appellant a notice proposing to assess additional tax and interest in the amount of \$398.23 for the year 1973. Appellant protested the proposed assessment contending that she properly computed her 1973 tax liability on the original return according to the rates applicable to a head of household. Upon consideration of appellant's protest, respondent determined that appellant was entitled to file as a head of household for 1973 and that she had properly computed her tax liability on the original return. Accordingly, respondent revised the proposed assessment to reflect a deficiency in the amount of \$161.95, which amount purportedly represents the difference between the \$286.62

^{1/} A taxpayer may qualify as a "surviving spouse" only if his or her spouse died during either of the two taxable years immediately preceding the taxable year, in question. (Rev. & Tax. Code, - § 17046.)

Appeal of Audrey C. Jaegle

refund initially claimed by appellant and the \$448.00 which had been paid to appellant./ Appellant protested the revised assessment and this appeal followed.

During the course of this appeal, appellant indicated her willingness to return the refund overpayment. However, appellant contends that she should not be required to pay the interest which has accrued on that amount since the refund overpayment was made as a result of respondent's error. Therefore, the sole issue presented by this appeal is whether appellant is liable for the payment of interest-on the deficiency assessment.

Section 18688 of the Revenue and Taxation Code provides, in pertinent part:

Interest upon the amount assessed as a deficiency/ shall be assessed, collected and paid in the same manner as the tax. .. from the date prescribed' for the payment of the tax until the date the tax is paid. (Emphasis added.)

This board has previously held that the payment of interest on an assessed deficiency.& mandatory pursuant to the clear language of section 18688. (Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal. , Aug. 1, 1974; Appeal of Ruth Wertheim Smith, Cal. St. Bd. of Equal., Aug. 3, 1965.) The interest is not a penalty imposed on the taxpayer; it is merely compensation for the use of money. Thus, interest accrues upon the amount assessed as a deficiency regardless of the reason for the assessment.

Although we sympathize with appellant's position, we have no alternative but to sustain respondent's action in this matter.

2/ Respondent concedes that appellant was entitled to a refund in the amount of \$286.62 for the year 1973. Therefore, since the difference between \$448.00 and \$286.62 equals \$161.38, we must assume that respondent erred in computing the deficiency.

3/ The refund overpayment constitutes a "deficiency", as that term is defined in section 18591.1 of the Revenue and Taxation Code. (See Int. Rev. Code of 1954, § 6211; Treas. Reg. § 301.6211-1(f).)

Appeal of Audrey C. Jaegle

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Audrey C. Jaegle against a proposed assessment of additional personal income tax in the amount of \$161.95 for the year 1973, be and the same is hereby modified to correct the error made by respondent in computing the additional tax. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 22nd day of June, 1976, by the State Board of Equalization.

William W. Reynolds, Chairman
George J. Kelly, Member
John G. Hearn, Member
Iris Sankley, Member
_____, Member

ATTEST: W W Dunlap, Executive Secretary