



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
AMY M. YAMACHI }

For Appellant: Amy M. Yamachi, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Paul J. Petrozzi
Counsel

O P I N I O N

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 Amy M. Yamachi against a proposed assessment of additional personal income tax in the amount of \$135.00, plus interest, for the year 1974.

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Subsequent to the filing of this appeal, **appellant** acquiesced in the amount of the additional tax assessment and remitted her personal check in the amount of **\$135.00**. She has not paid any of the interest which accrued on that deficiency assessment, however, and has asked this board to consider all of the circumstances and to rule on the propriety of the interest assessment.

Appellant filed a timely California personal income tax return for 1974. In that return she claimed head of household status and computed her tax liability accordingly. She indicated that the individual qualifying her **as** a head of household was a Mr. Snow, who lived with her and allegedly received more than one-half his support from her during 1974. Mr. Snow bore no relationship to appellant other than as a friend.

Respondent disallowed appellant's claimed head of household status but allowed her an \$8.00 dependent exemption credit for Mr. Snow, pursuant to section 17054, subdivision **(c)**, of the Revenue and Taxation Code. Respondent's disallowance of appellant's status as a **head** of household was based upon section 17044, subdivision **(a)**, of the Revenue and Taxation Code, which precludes a taxpayer from being considered a head of household when the individual otherwise qualifying as a dependent of the taxpayer is unrelated by blood or marriage. Appellant protested respondent's action, and this **timely** appeal followed affirmation of the proposed assessment.

Appellant contends that in completing her tax return for 1974 she consulted respondent's 1974 instruction pamphlet and its definitions of persons qualified to claim head of household status. She contends that nowhere in those instructions was there any indication that an unrelated dependent would not qualify her as a head of household. She stresses that this omission was corrected by respondent in its instruction pamphlet for 1975, the following taxable year. Although appellant now understands that the law specifically precluded her from qualifying as a head of household in 1974 on the basis of her living arrangement with Mr. Snow, she nevertheless contends that in filing her return she was misled by respondent's instruction pamphlet and this board should therefore eliminate the interest which accrued on the deficiency assessment.

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Appellant's argument is in the nature of estoppel, an equitable principle which will only be invoked against the government where the case is clear and the injustice great. (United States Fidelity and Guaranty Co. v. State Board of Equalization, 47 Cal- 2d 8, 89 [303 P.2d 1034] (1956).) We have refused to invoke estoppel in cases where taxpayers understated their tax liability on their returns in alleged reliance on erroneous statements made by employees of respondent (Appeal of Virgil E. and Izora Gamble, Cal. St. Bd. of Equal., May 4, 1976; Appeal of Richard W. and Ellen Campbell, Cal. St. Bd. of Equal., Aug. 19, 1975, Appeal of Tirzah M. G. Roosevelt, Cal. St. Bd. of Equal., May 9, 1975), where the reliance was on allegedly ambiguous instructions issued by respondent (Appeal of Michael M. and Olivia D. McKieve, Cal. St. Bd. of Equal., Nov. 19, 1975), and where respondent's written instructions were actually obsolete or incorrect. (Appeal of Lester A. and Catherine B. Ludlow, Cal. St. Bd. of Equal., March 18 1975; Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct. 7, 1974.) We must similarly refuse to enforce an estoppel against respondent in this case.

Respondent's 1974 instructions may have been incomplete in their definition of a head of household, but that does not alter the fact that the law specifically precludes a taxpayer in appellant's circumstances from claiming head of household status. (Rev. & Tax. Code, § 3.7044, subd. (a); see also Appeal of Stephen M. Padwa, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Judith A. Marshall, Cal. St. Bd. of Equal., May 10, 1977.) Furthermore, appellant obviously did not rely to her detriment on respondent's incomplete instructions in selecting her living arrangement during 1974, since the instruction pamphlet was not issued until early in 1975. Such detrimental reliance must be shown to warrant application of the estoppel doctrine. (See Market St. Ry. Co. v. State Board of Equalization, 137 Cal. App. 2d 87 [290 P.2d 20] (1955); Appeal of Virgil E. and Izora Gamble, *supra*; Appeal of Arden K. and Dorothy S. Smith, *supra*.)

With respect to the interest accrued on the deficiency, section 18688 of the Revenue and Taxation Code provides that interest on a deficiency "shall be assessed, collected and paid in the same manner as the

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tax...." The interest is not a penalty imposed on the taxpayer; it is merely compensation for the use of money. (Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976.) The language of section 18688 is clear and mandatory, and this board is not empowered to waive statutory interest accruing on an unpaid deficiency assessment. (See Appeal of Audrey C. Jaegle, supra, and Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal., Aug. 1, 1974.)

For the reasons stated above, respondent's action in this matter must be sustained.

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 Amy M. Yamachi against a proposed assessment of additional personal income tax in the amount of \$135.00, plus interest, for the year 1974, be and the same is hereby sustained, with the understanding that the \$135.00 payment will be credited on the total amount due.

Done at Sacramento, California, this **28th** day
of June, 1977, by the State Board of Equalization.

William B. Burns, Chairman
 Richard Lee, Member
 Mrs. Sappley, Member
 George H. H. H., Member
 _____, Member