

Appeal of Patrick J. and Brenda L. Harrington

The principal issues are: (1) whether appellants are entitled to a moving expense deduction; and (2) whether appellants **are** liable for interest on the deficiency assessment.

On their nonresident personal income tax return **for** 1973, appellants Patrick J. and Brenda L. **Harrington** claimed a moving expense deduction allegedly **representing** the expense of moving from California to Illinois to accept employment in that state. Appellants did not receive any reimbursement of this expense. Respondent disallowed the deduction, issuing a deficiency assessment in the amount of \$146.35. Upon later review, respondent conceded that this amount should be \$124.78. Appellants protested the assessment and interest thereon, and this appeal followed.

To determine **the** deductibility of the expenses in **question**, we turn to the statute under which the **deduction** is claimed. Section 17266 of the Revenue and Taxation Code allows a deduction for certain moving expenses of a taxpayer. Subdivision (d) limits this deduction, for interstate moves, by providing in relevant part:

In the case of an individual ... whose former residence was located in this state and his **new place of residence is located outside this** state, the deduction allowed by this section shall be allowed only if any amount received **as** payment for or reimbursement of expenses of moving from one residence to another residence is includable in gross income as provided by Section 17122.5 and the amount of deduction shall be limited only to the amount of such payment or reimbursement or the amounts specified in subdivision (b), whichever amount is the lesser.

Appellants herein were not reimbursed for the expenses incurred in moving from California to Illinois.' Under the circumstances, they **are not entitled** to a moving expense deduction under section 17266. (Appeal of Norman L. and Penelope A. Sakamoto, Cal. St. Bd. of Equal., May 10, 1977.)

However, **appellants seek affirmation** of their deduction on the basis **of** their alleged reliance upon a statement accompanying respondent's form 540 NR, to the effect that qualifications for the moving expense deduction are substantially the same for California as for

Appeal of Patrick J. and Brenda L. Harrington

federal income tax purposes. Appellants argue that they were misled by **respondent's** form because in fact, the limitation contained in subdivision (d) of section 17266 has no federal counterpart. They now appear to concede that the law specifically disallows their moving expense deduction but contend **that** their reliance on allegedly misleading instructions warrants application of the **es-**toppel doctrine with **respect** to both the deficiency assessment and the **interest** thereon. In support of this asserted defense, appellants merely have established that they were unaware of subdivision (d) of section 17266. This board has previously dismissed as without merit the argument that a lay person should bear no liability resulting from ignorance of the law. (Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal., Aug. 1, 1974.)

Furthermore, appellants did not rely to their detriment on respondent's instructions because their tax liability had accrued **before** the instructions were **followed**. (Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974; Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977.) The doctrine of equitable estoppel may be invoked against respondent only **when it is clearly shown that a taxpayer has relied to his detriment on respondent's instructions**. (Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct. 7, 1974.)

With respect to the interest accrued on the deficiency, this board has previously held that the payment of accrued interest is mandatory, regardless of the reason for the assessment, pursuant to section 18688 of the Revenue and Taxation Code. (Appeal of Amy M. Yamachi, supra; see also Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976.) **Contrary to appellants' argument**, delays in the determination of a taxpayer's appeal do not preclude interest being charged. (Appeal of Ruth Wertheim Smith, Cal. St. Bd. of Equal., Aug. 3, 1965.) Here, **extensions** of time were granted to respondent in accordance with board **regulations** (Cal. Admin. Code, tit. 18, Reg. 5026) and the delay was not entirely respondent's fault in view of appellants' failure to reply promptly to communications from **respondent**. Aside from this, appellants had the option of paying the deficiency assessment to stop the running of interest thereon, **without** jeopardizing their right to a refund. (See Appeal of Ruth Wertheim Smith, supra.)

Appeal of Patrick J. and Brenda L. Harrington

The imposition of interest is not a penalty, but is compensation for the taxpayer's use of money. (Appeal of Audrey C. Jacole, supra.) has no authority to waive statutory interest mandated by section 18688; to do so, in the absence of circumstances of grave injustice, would be to usurp a legislative prerogative. (Appeal of Arden K. and Dorothy S. Smith, supra.)

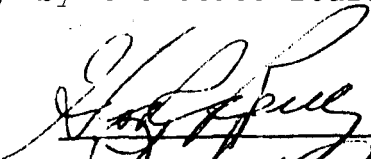
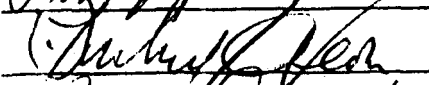

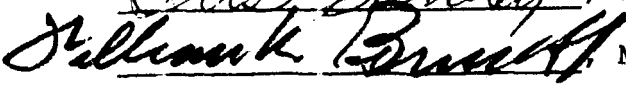
For the reasons stated above, respondent's action in this matter must be sustained.

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,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18594 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Patrick J. and Brenda L. Harrington against a proposed assessment of additional personal income tax in the amount of \$146.35 for the year 1973, be and the same is hereby modified in accordance with respondent's concession that the correct amount should be \$124.78. In all other respects respondent's action is sustained.

Done at Sacramento, California, this 11th day of January, 1977, by the State Board of Equalization.


_____, Chairman

_____, Member

_____, Member

_____, Member
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