

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SAMUEL C. AND LOIS B. ROSS)

For Appellants: Samuel C. Ross, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Kathleen M. Morris
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 Samuel C. and Lois B. Ross against a proposed assessment of additional personal income tax in the amount of \$70.87, plus interest, for the year 1973.

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The issues presented are: (1) whether appellants are entitled to a deduction for moving expenses; and (2) whether they are liable for interest imposed on the deficiency assessment.

Appellants incurred moving expenses in the amount of **\$4,386.56** when they moved from California to Utah in June of 1973. Since July of that year they have continued to reside in Utah. Samuel C. Ross received a reimbursement from his employer in the sum of **\$2,323.56** for these moving expenses. Appellants neither included the reimbursed moving expenses in gross income, nor deducted them from gross income. On their 1973 personal income tax return, appellants claimed a \$2,063 moving expense deduction, reflecting the moving expenses for which they were not reimbursed. These consisted of: residence sale expenses, \$1,917; attorney fees, \$25; temporary living expenses, \$80; and direct moving expenses, \$41.

Appellants' personal income tax return for the year **1973** reported a total tax liability of \$116. Since appellant Samuel C. Ross' employer had withheld tax in the amount of \$245, the return indicated an overpayment. On or before July 15, 1974, respondent issued a refund of \$129, without interest, to appellants. Subsequently, respondent audited **their return**, and disallowed the moving expense deduction. **As a consequence respondent, on March 12, 1976, issued a timely proposed deficiency assessment in the amount of \$70.87, plus interest.** (See Rev. & Tax. Code, § 18586.) This appeal followed.

To determine the deductibility of the moving 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 designated moving expenses. Subdivision (d) limits this deduction, with respect to 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 **includible** in gross income as provided by Section 17122.5 and the amount of deduction shall be limited only to the amount of such

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payment or reimbursement or the amounts specified in **subdivision** (b), whichever amount is the lesser. 1/

In view of the aforementioned subdivision (d), appellants are not entitled to a deduction for these unreimbursed moving expenses. (Appeal of Patrick J. and Brenda L. Harrington, Cal. St. Bd. of Equal., Jan. 11, 1978; Appeal of Norman L. and Penelope A. Sakamoto, Cal. St. Bd. of Equal., May 10, 1977; Appeal of James G. Evans, Cal. St. Bd. of Equal., Dec. 6, 1977.)

Appellants nevertheless contend that respondent may not collect the resulting additional tax liability because respondent issued a refund of all tax withheld by Samuel C. Ross' employer in excess of the amount of self-assessed tax. We do not agree. This contention was rejected in the Appeal of Dorothy M. Page, decided by this board, May 10, 1977. In addition, section 19062.13 of the Revenue and Taxation Code provides that:

Any action of the Franchise Tax Board in refunding the excess of tax withheld under Sections 18805 and 18806 or estimated tax paid under Section 18556 **shall not** constitute a determination of the correctness of the return of the taxpayer for purposes of this part.

We must also reject appellants' contention that no interest should be imposed on the proposed assessment. Section 18688 of the Revenue and Taxation Code specifically provides that 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. Pursuant to this section, payment of interest measured from the last day prescribed for filing the return on unpaid deficiency assessments is mandatory. (Appeal of Ruth Wertheim Smith, Cal. St. Bd. of Equal., Aug. 3, 1965; Appeal of Patrick J. and Brenda L. Harrington, supra; Appeal of Dorothy M. Page, supra.) Moreover, as already

1/ Section 17122.5 provides for the inclusion in gross income (as compensation for services) of any amount received as payment for or reimbursement of expenses of moving from one residence to another residence which is attributable to employment.

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indicated, the deficiency was issued within the required four-year statutory period. (See Rev. & Tax. Code, § 18586.) Consequently, imposition of interest for the entire period was required by the statute.

For the reasons stated above, respondent's **action** in **this** matter is 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 18595 of the Revenue and Taxation **Code**, that the action of the Franchise Tax Board on the protest of Samuel C. and Lois B. Ross against a proposed assessment of additional **personal** income tax in the amount of \$70.87, plus interest, for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this **4th** day
of **May**, 1978, by the State Board of Equalization.

Leo F. Keely, Chairman

Shahid Khan, Member

Mrs. Simey, Member

William K. Burnett Member

_____, Member