BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JAMES H. GOODE)

For Appellant: James H. Goode, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John A. Stilwell, Jr.
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 James H. Goode against a proposed assessment of additional personal income tax and penalty in the total amount of $211.70 for the year 1969.

In 1971, as part of its filing enforcement program, respondent was notified by the California Employment Development Department that appellant had earned income in 1969 in the amount of $24,118. When respondent was unable to locate a 1969 return for appellant in its files, it notified appellant of that fact and demanded that he file a 1969 return in 10 days, if he had not already done so. Appellant filed the requested return on June 29, 1971, and stated that he had previously filed the return on May 13, 1970, and that he had requested an extension of time to file that return. According to respondent's records, however, appellant did not request an extension of time to file and did not actually file a 1969 return until June 29, 1971.

In 1973 respondent received a Revenue Agent's Report from the Internal Revenue Service indicating that the Service had disallowed $2,100 of the $2,400 deduction for alimony claimed on appellant's 1969 federal income tax return. The explanation for this adjustment was as follows:

> When payments for both alimony and child support are less than the yearly amount called for in the [divorce] decree, support for the child must be satisfied before any amount is considered to be alimony. Therefore, the amount claimed has been adjusted.

This ruling was based on the specific language of Internal Revenue Code section 71(b), which denies an alimony deduction for child support payments.

Since Revenue and Taxation Code section 17082 adopts the rule of Internal Revenue Code section 71(b) for state income tax purposes, respondent followed the Internal Revenue Service in disallowing $2,100 Of appellant's claimed 1969 alimony deduction. Respondent issued a proposed assessment of additional tax reflecting this adjustment, and also imposed a 25 percent penalty for appellant's failure to file a timely 1969 return. Following appellant's protest against this assessment, a hearing was held at which one of respondent's auditors examined appellant's divorce decree, cancelled checks, and other records. The auditor concluded that the disallowance of the alimony deduction was correct, and he attempted to explain the matter fully to appellant. Based on the auditor's conclusion, and appellant's apparent agreement with it, respondent thereafter denied appellant's protest. Appellant then filed this appeal, seeking some further explanation of the assessment against him.

In light of the facts set forth above, we are compelled to conclude that the assessment was correct in every respect. It appears that during 1969 appellant's total payments of alimony and child support were less than he was required to make under the terms of his divorce decree. When this is the case, both federal and state law allow an alimony deduction for only that portion of the total payments which exceeds the required annual child support obligation. (Int. Rev. Code of 1954, § 71(b); Rev. & Tax. Code, § 17082.) Since appellant has offered no evidence which indicates that he is entitled to a larger alimony deduction than respondent and the Internal Revenue Service have allowed, we must sustain the partial disallowance of this deduction. (See Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.)

Similarly, we must sustain the late filing penalty. The only 1969 return respondent has any record of receiving from appellant was filed on June 29, 1971, more than one year after the due date of April 15, 1970. Subdivision (a) of Revenue and Taxation Code section 18681 provides for a late filing penalty of five percent a month, not to exceed 25 percent, of the tax due, unless the taxpayer shows that the failure to file was due to reasonable cause and not due to willful neglect. Since appellant has not proffered any excuse at all for his failure to file a timely return, the penalty assessment was proper.

Appeal of James H. Goode

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 James H. Goode against a proposed assessment of additional personal income tax and penalty in the total amount of $211.70 for the year 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of September, 1978, by the State Board of Equalization.

, Chairman

, Member

, Member

, Member

, Member