

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal Of)
KENNETH J. AND **FREDA** A. ROTH)

For Appellants: Kenneth J. Roth, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

James C. Stewart
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 Kenneth J. and **Freda** A. Roth against a proposed assessment of additional personal income tax in the amount of \$96.02 for the year 1974. Appellants **paid** the amount in issue, plus interest, which totaled \$116.11. Therefore, pursuant to section 19061.1 of the Revenue and Taxation Code, the appeal will be treated as an appeal from the denial of a claim **for** refund.

Appeal of Kenneth J. and Freda A. Roth

The issue presented is whether appellants are entitled to a **moving** expense deduction for the unreimbursed expenses of an interstate move.

On their 1974 part-year nonresident return, appellants deducted **\$2,356.11** for the expenses incurred in a move from California to Arkansas in that year. Appellants furnished no substantiation of the expenses and respondent **disallowed the** deduction. In the course of appellants' protest they received a copy of the applicable California law and agreed that the expenses were not deductible. However, they argue that the deduction should be allowed because respondent's form 540NR allegedly misled them by stating that the qualifications for the moving expense deduction are substantially the same for California as for federal income tax purposes.

This is substantially the same situation as was presented in the Appeal of Patrick J. and Brenda L. Harrington, decided by this board on January 11, 1978. In Harrington, the taxpayers contended that **their** reliance on allegedly misleading instructions warranted application of the **doctrine of** equitable estoppel. After reviewing the nature of estoppel, we concluded that the taxpayers had not relied to their detriment on respondent's instructions because their tax liability **had accrued** before the instructions were followed. Absent such detrimental **reliance, estoppel may not be invoked against respondent.**

We believe our decision in the instant appeal is governed by the principles set forth in Harrington, and for the reasons stated therein, we must **sustain** respondent's denial of appellants' claim for refund.

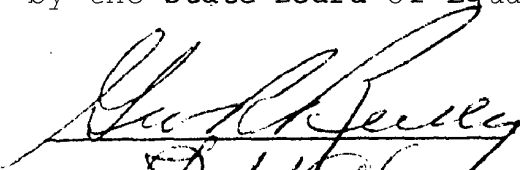
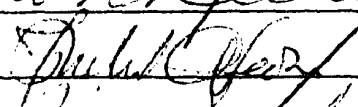
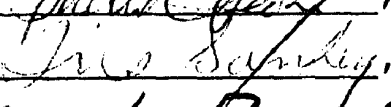

Appeal of Kenneth J. and Freda A. Roth

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Kenneth J. and Freda A. Roth for refund of personal income tax in the amount of \$116.11 for the year 1974, 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