BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
HENRY L. AND JOYCE STEIN)

For Appellants: Henry L. Stein, 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 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the-claim of Henry L. and Joyce Stein for refund of personal income tax in the amount of $739.98 for the year 1975.

The question presented is whether respondent properly disallowed a portion of the moving expense. deduction reported on appellants* 1975 return.

In 1975 appellants incurred expenses totaling $16,460 in connection with an employment related move to California from another state. The record on appeal indicates the following breakdown of the expenses:

$1,729	Moving household goods and traveling from former residence.
$3,783	Travel, meals and lodging connected with the search for a new residence.
$10,948	Qualified residence sale and purchase expenses.
$16,460	Total.

The expenses were fully reimbursed by Mr. Stein's employer, and the reimbursement was properly included in appellants' gross income for 1975. (Rev. & Tax. Code, § 17122.5.). Appellants claimed a-$16,460 deduction for the moving expenses on their 1975 return.

Section 17266 of the Revenue and Taxation Code provides, in pertinent part:

> (a) There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer ... at a new principal place of work.
>
> (b)(1) For purposes of this section, the term "moving expenses" means only the reasonable expenses--
>
> (A) Of moving household goods and personal effects from the former residence to the new residence,
>
> (B) Of traveling (including meals and lodging) from the former residence to the new place of residence,
>
> (C) Of traveling (including meals and lodging), after obtaining employment, from the former residence to the general location of

the new principal place of work and return, for the principal purpose of searching for a new residence,

(D) Of meals and lodging while occupying temporary quarters in the general location of the new principal place of work during any period of 30 consecutive days after obtaining employment, or

(E) Constituting qualified residence sale, purchase, or lease expenses.

* * *

.(3)(A) The aggregate amount allowable as a deduction under subdivision (a) in connection with a commencement of work which is attributable to expenses described in subparagraph (C) or (D) of **paragraph** (1) shall not exceed one thousand dollars ($1,000). The aggregate amount allowable as a deduction under subdivision (a) which is attributable to qualified residence sale, purchase, or lease expenses shall not exceed two thousand five hundred dollars **($2,500),** reduced by the aggregate amount so allowable which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1).

* * *

(d) In the case of an individual **whose** former residence was outside this state and his new place of residence is located within 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. (Emphasis added.)

Following an audit of appellants' 1975 return, respondent disallowed all except $4,229 of the $16,460 moving expense deduction. Respondent based its action on the limitations specified in subdivisions (b) and (d)

of section 17266. On November 21, 1977, respondent notified appellants ofits proposed assessment of additional tax and, on February 23, 1978, respondent affirmed the assessment. Shortly thereafter, but prior to the filing of this appeal, appellants paid the additional tax and interest.

Appellants do not challenge respondent's limitation of their moving expense deduction under section 17266. It is appellants' position that respondent should be estopped from assessing the additional tax and interest because the "Individual Income Tax" instruction booklet supplied by respondent to California taxpayers for the year 1975 contained no reference to the limitations specified in section 17266. 1/

As a general rule, the doctrine of equitable estoppel will be applied against the state in tax matters only where the case is clear and the injustice great. (United States Fidelity and Guaranty Co. v. State Board of Equalization, 47 Cal. 2d 384, 389 [303 P.2d 1034] (1956); Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct., 1974.) An essential requirement for application of the doctrine is a clear showing of detrimental reliance on the part of the taxpayer. (Appeal of Patrick J. and Brenda L. Harrington, Cal. St. Bd. of Equal., Jan. 11, 1978; Appeal of Willard S. Schwabe, Cal. St. Bd. of Equal., Feb. 19, 1974.) In the instant case, it is not clear that appellants relied to their detriment on respondent's instructions. Appellants' liability for the tax deficiency in question accrued well before the instructions were followed. Accordingly, estoppel may not be invoked to relieve appellants of their liability for the tax deficiency. (Appeal of Kenneth J. and Freda A. Roth, Cal. St. Bd. of Equal., Sept. 27, 1978.)

1/ The instructions contain a single statement regarding the deduction of moving expenses:

> If you moved into or out of California, the deduction for moving expenses is limited to the lesser of:
>
> 1. The actual expenses incurred, or
>
> 2. The amount of reimbursement.

With respect to the interest accrued on the deficiency, this board has consistently held that the payment of such interest is mandatory, regardless of the circumstances surrounding the underlying assessment, pursuant to section 18688 of the Revenue and Taxation Code. (Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976; Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal., Aug. 7, 1974.) The interest is not in the nature of a penalty imposed on the taxpayer; it is merely compensation for the use of money. (Appeal of Audrey C. Jaegle, supra; see also Vick v. Phinney, 414 F.2d 444, 448 (5th Cir. 1969).) For these reasons, we must also deny appellants' request to be relieved from liability for the accrued interest.

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 Henry L. and Joyce Stein for refund of personal income tax in the amount of $739.98 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of December, 1978, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____ Member

_____ Member