

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
  )  
ARTHUR H. AND BETTY R. MULLER )

For Appellants: Arthur H. Muller, 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 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Arthur H. and Betty R. Muller against a proposed assessment of additional personal income tax in the amount of \$176.00, plus interest, for the year 1974. The appellants paid the proposed assessment of additional tax and the sole item in dispute is the propriety of the interest assessment of \$45.68.

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By letter dated March 4, 1976, appellants advised respondent that the Internal Revenue Service (IRS) had adjusted their 1974 federal income tax, and they also enclosed the IRS deficiency notice, showing a federal tax increase of \$407.00 and interest of \$22.74. No further detail was shown on the **notice**. On April 23, 1976, respondent wrote appellants requesting further details of the federal adjustments in order that an accurate calculation of their additional state tax liability could be made. The record in this appeal does not **establish that** appellants replied to this request.

On or **after April 11, 1977**, respondent received a **copy** of the federal revenue agent's report pursuant to section 6103(d) of the Internal Revenue Code of 1954. The report showed the details of the original federal adjustments to appellants' 1974 return. After applying these corrected adjustments and crediting amounts previously paid, there remained a state tax deficiency in the amount of \$176.00. Consequently, respondent issued a proposed tax **assessment** for that amount, plus accrued interest, on June 23, 1977.

Appellants duly protested respondent's action but thereafter, by letter dated October 13, 1977, advised respondent that they agreed with the additional tax liability of \$176.00, and enclosed payment. Appellants stated, however, that they would not pay the accrued interest because they felt that respondent had "purposely procrastinated" the issuance **of** the additional proposed assessment. **On December 13, 1977**, respondent issued a notice **affirming** its proposed assessment of additional tax. That notice reflected the accrual of **interest to** that date in the amount of \$45.68.

Appellants contend that they promptly replied to respondent's request of April 23, 1976, advising respondent that they desired to pay the additional state tax liability to avoid the accumulation of interest and penalty charges, and requesting that respondent obtain the detailed information from the IRS concerning the federal audit. They urge that interest is only properly imposed if there is reasonably prompt action by **respondent in** asserting a tax deficiency after a taxpayer has voluntarily notified it of an IRS deficiency adjustment. They assert that the 15 months delay from the time appellants originally notified respondent of the IRS adjustment (March 4, 1976) to the time of the additional proposed assessment (June 23, 1977) constituted **an** unreasonable delay that was caused solely by respondent.

**We must** reject appellants' contention that an interest assessment should not be imposed. Section 18688 of **the**

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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. In the absence of circumstances of grave injustice, this board has no authority to waive mandated statutory interest. (Appeal of Howard G. and Mary Tons, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Patrick J. and Brenda L. Harrington, Cal. St. Bd. of Equal., Jan. 11, 1978; Appeal of Virgil E. and Izora Gamble, Cal. St. Bd. of Equal., May 4, 1976.) Such grave circumstances are clearly absent here. The information initially provided by appellants in March of 1976 was incomplete and they did not furnish the details of the adjustments when requested to do so. Despite appellants allegations, the record in this appeal does not establish that a reply was received to respondent's request of April 23, 1976. In any event, after receiving a copy of the federal report, respondent issued the tax deficiency well within the four-year statutory limitation period. (Rev. & Tax. Code, § 18586.)

The record does disclose, however, that interest was improperly computed to December 13, 1977, rather than to October 13, 1977, the date the tax was paid. The excess interest charges should be deleted.

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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 Arthur H. and Betty R. Muller against a proposed assessment of additional personal income tax in the amount of \$176.00, plus interest, for the year 1974, be and the same is hereby modified to reflect the payment of \$176.00 and the deletion of the interest charges **imposed** for the period after October 13, 1977. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 9th day of May, 1979, by the State Board of Equalization.

*William L. Burns*, Chairman  
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*J. Paul Chen*, Member  
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*David W. Rosenberg*, Member  
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*Neil R. Berry*, Member  
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\_\_\_\_\_, Member