

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EMIL AND MELVENE B. NEEME) No. **84R-1242-PD**

For Appellants: Emil Neeme,
in pro. per.

For Respondent: Israel Rogers,
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), 1 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Emil and Melvene B. Neeme for refund of personal income tax in the amount of **\$257.96** for the year 1980.

1/ Unless otherwise specified, all section references **are** to sections of the Revenue and Taxation Code as in effect for the year in issue.

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At issue is whether interest on a deficiency assessment was properly assessed by respondent.

Appellants filed a timely 1980 personal income tax return. In December 1981, the Internal Revenue Service (IRS) notified them that their federal return would be audited. On August 7, 1982, the IRS issued a final federal determination of changes to appellants' 1980 federal return. Although appellants did not notify respondent of the changes which had been made to appellants' return the IRS did. Thereafter, on October 12, 1983, respondent issued a notice of proposed assessment based on the final federal changes insofar as they were applicable to appellants' 1980 California return. The assessment included interest computed from the original due date of the taxes for 1980. Appellants protested, contending that they expected to pay the taxes due plus a reasonable interest charge, but that the interest charged for the **15-month** period between the federal assessment and the California assessment was a "rip-off of honest ordinary citizens." (Appeal Ltr.) Respondent affirmed its assessment. Appellants paid the assessment and filed this claim for refund of the interest they paid on the assessment. The claim was denied.

Section 18688 provides:

Interest upon the amount assessed as a deficiency shall be assessed, collected- and paid in the same manner as the tax at the rate of 6 percent per year from the date prescribed for the payment of the tax until the date the tax is paid. If any portion of the deficiency is paid prior to the date it is assessed, interest shall accrue on such portion only to the date paid. However, the rate shall be 12 percent per year instead of 6 percent per year with respect to interest payable on unpaid amounts which are delinquent more than one year.

Thus, the interest assessed must be computed pursuant to the statute from the time the tax was due, April 15, 1981, to the date of the payment. The imposition of interest under section 18688 is mandatory. The interest due is not imposed as a penalty but is imposed as compensation for the use of money which, correctly, would have been paid no later than the due date of the taxes upon which the interest was based. (See Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976; Appeal

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of Richard E. and Geraldine Goodman, Cal. St. Bd. of Equal., Oct. 10, 1984.)

The essence of appellants' claim appears to be that they object to the length of time which passed, and the interest which accrued because of that passage of time, between the federal assessment and the California assessment. They believe that no interest should be charged for that time because the respondent took too long to issue its assessment.

The legislature has, however, considered the time which might properly pass between a federal assessment and a California assessment based upon it. Section 18451 provides, in part:

If the amount of **gross** income or deductions for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue ... such taxpayer shall report such change or correction . . . within 90 days after **the final determination of such change or correction**

Section 18586.2 provides, in pertinent part:

If a taxpayer fails to report a change or correction by the Commissioner of Internal Revenue ... a notice of proposed deficiency assessment resulting from the adjustment may be mailed to the taxpayer within four years after the change, [or] correction

Accordingly, to be timely, appellants' notice of proposed assessment for 1980 must have been mailed on or before August 7, 1986. The notice of proposed deficiency assessment in this case was mailed on October 12, 1983, and was timely under the provisions of the statute. Therefore, we have no alternative but to sustain the action of respondent.

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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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Emil and Melvene B. Neeme for refund of personal income tax in the amount of \$257.96 for the year 1980, be and the same is hereby sustained.

Done at Sacramento, California, this **10th** day of June , 1986, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins , Chairman
Conway H. Collis , Member
William M. Bennett , Member
Ernest J. Dronenburg, Jr. , Member
Walter Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9