

BEFORE THE STATE BOARD OF **EQUALIZATION**  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
MARIE DELAHUNTE ) No. 85R-604-KP  
)

For Appellant: Marie Delahunte,  
in pro. per.

For Respondent: Anna Jovanovich  
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 claims of Marie Delahunte for refund of personal income tax in the amounts of \$723.03. and \$2,110.66 for the years 1980 and 1981, respectively.

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

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The issue on appeal is whether appellant is entitled to a refund of taxes paid on interest income she **received** from securities guaranteed by the Government **National Mortgage Association (GNMA)**.

Sometime **prior** to September 15, '1984, appellant applied for and was granted a refund for income taxes she paid in 1982 on **interest income** received from securities guaranteed by **GNMA**. On September' 15, 1984, appellant sent a letter to the **Franchise Tax Board** requesting a **similar** refund for taxes **paid** on interest income received from **GNMA** securities for the **appeal** years- Appellant's second refund request was predicated on the belief that the interest income she received from the **GNMA** securities was exempt from California's personal income tax and that she had been mistaken when she included it as taxable **income on her tax returns for the years in question.**

Respondent denied appellant's second claim for refund. Appellant **protested, stating** that respondent had previously agreed **with** appellant's position with regard to 1982 and **was, therefore, estopped** from denying the claims for the appeal years. Respondent disagreed with appellant's argument and this **appeal** followed.

Section 17137 provides **that** gross income will not include any income which California is prohibited from taxing because of federal. **law.** congress, in passing 31 U.S.C. section 3724, subsection (a), provided that stocks and obligations of the United States Government are exempt from taxation by any state. **For** a security to be classified as an obligation of the United States, four requirements must be met: (1) the security must be a written document; (2) the security must bear interest; (3) **the security must** include a **binding** promise by the United States to **pay** specified sums at specified dates; and, (4) the security must include a pledge of full faith and credit by the United States to support the promise to **pay.** (Smith v. Davis, 323 U.S. 111, 115 [89 L.Ed. 107] (1944).)

This board has previously faced the issue of whether securities and notes guaranteed by GNMA satisfy the four-requirement test put **forth** in Smith v. Davis, supra. (See Appeal of John La Montaine, Cal. St. Bd. of Equal., Feb. 4, 1936.) In determining that the interest income derived from **GNMA** securities was **subject** to California's income tax, we stated that:

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the interest earned on Ginnie Maes is not exempt from state taxation because the certificates do not carry a binding promise by the United States to pay specified sums at specified times: and the certificates are not used- to secure credit for the government, but to attract private capital so that government credit would not be necessary,

(Appeal of John La Montaine, supra.)

As appellant in the present case has provided us with nothing to contradict our holding in the Appeal of John La Montaine, supra, we find that that case is **controlling**. We reach this conclusion despite appellant's unsupported argument that California may **only tax securities issued** under 12 U.S.C. '721, subsection (b), while her securities were exempt securities issued under subsection (g). The Appeal of John La Montaine, supra, was decided under the assumption that the **securities** in question were issued under section 1721, subsection (g).

Consequently', the only issue remaining is whether respondent is estopped from its refusal to honor the claim for refund due to its prior actions. Appellant states that respondent did refund the tax she paid on interest income earned in 1982 on **GNMA** backed securities. Furthermore, appellant asserts that since the 1983 interest income statement, issued by the savings and loan which originally offered the **GNMA** securities, stated that the interest income was not taxable by California; respondent must follow its past actions and the statement issued by the savings and loan and issue the appropriate refunds for the years presently at issue.

**Estoppel** will be invoked **against** a governmental agency only in rare and unusual circumstances. (California Cigarette Concessions v. City of Los Angeles, 53 Cal.2d 865 [3 Cal. Retr. 6751 (1960)].) "It is the general rule that the government does not lose its revenues because of an erroneous ruling of an administrative official as to the meaning of a tax law." (La Societe Francaise v. Cal. Emp. Corn., 56 Cal.App.2d 534, 553 (1943).) To apply the doctrine of **estoppel** against **respondent**, the taxpayer must show that he **detrimentally** relied upon respondent's actions. or directions. (Appeal of Philip W. and Renate Tubman, Cal. St. Bd. of Equal., Aug. 20, 1985.)

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Simply stated, there was no reliance, **detrimental** or otherwise, upon any action or statement by respondent which influenced appellant's correct decision to report the interest as taxable income during the appeal years. **All** of the events which convinced appellant that she was entitled to a refund for the years at issue occurred subsequent to the filing of her tax returns for the appeal years. Consequently, the doctrine of estoppel does not apply in this case. Finally, we note that, regardless of **which** year the initial refund covered or when it was issued, respondent cannot be forced to compound its initial erroneous-refund by granting subsequent incorrect claims. (See La Societe Francaise v. Cal. Em? Corn., *supra*.)

For the above-stated reasons, respondent's action in this matter will be sustained.

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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 claims of Marie Delahunte for refund of **personal** income tax in the amounts of \$723.02 and **\$2,110.66** for the years 1980 and 1981, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day Of December , 1986, by the State Board of Equalization, with Board Members Mr. **Nevins**, Mr. **Collis**, Mr. **Bennett**, Mr. Dronenburg and Mr. Harvey present.

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

\*For Kenneth Cory, per Government Code section 7.9'