

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 92R-1242-SC
EARL W. AND PATRICIA A. MCFEATERS)
)

Appearances:

For Appellants:	Steven H. Weinraub Attorney at Law
For Respondent:	Karen Smith Counsel Lynn Toliver Paralegal

OPINION

This appeal is made pursuant to section 19324, subdivision (a),^{1/} of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Earl W. and Patricia A. McFeaters for refund of personal income tax in the amount of \$1 or more for each of the years 1983, 1984, 1985, 1986, 1987, 1988, 1989 and 1990.^{2/}

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

^{2/} Appellants concede that respondent has paid their refund claims for the 1989 and 1990 taxable years. Accordingly, the only years actually at issue on appeal are 1983 through 1988. Additionally, at the hearing of this appeal before the board on July 21, 1994, respondent agreed to refund: 1) the lien fee; 2) a portion of an overpayment which was not refunded but offset against another taxable year; and 3) some interest on an overpayment that was refunded in May of 1993.

The issues presented are the following: (1) is the statute of limitations for filing a claim for refund subject to equitable tolling; (2) did respondent properly assess penalties for failure to file a timely return, for failure to file after notice and demand, and for negligence; and (3) should interest be abated.

Appellants were granted extensions to file their California personal income tax returns for each taxable year herein appealed. Because appellants failed to file their returns by the extended due date in each year, respondent mailed notice and demand letters to appellant-husband. Receiving no response, respondent issued notices of proposed assessment (NPA's) assessing tax and penalties against appellant-husband for failure to file a timely return for 1983, 1984, 1985, 1986, 1987 and 1988; for failure to file after notice and demand for 1983, 1984, 1985, 1987 and 1988; and for negligence for 1987 and 1988. After the NPA's became final, respondent commenced its collection proceedings. Through its collection activities respondent received payments which fully satisfied appellants' tax liabilities for the years at issue.

On July 8, 1991, appellants filed their returns for 1983 through 1988, claiming a refund for the penalties and interest assessed for each year. Respondent adjusted its record to reflect the information provided on the returns. Respondent denied appellants' claims for refund and this timely appeal followed.

Appellants contend that appellant-husband is an alcoholic and that his alcoholism caused him to be mentally incompetent. Thus, although their claims for refund for 1983, 1984 and 1985 were untimely under former section 19053 (amended and renumbered to section 19306, operative January 1, 1994), they assert that the statute of limitations was equitably tolled until the refund claims were actually filed.

In support of their position that appellant-husband's mental incompetence equitably tolled the statute of limitations, appellants primarily rely on Scott v. United States, 847 F.Supp. 1499 (D. Haw. 1993), in which the district court held that: (1) the statute of limitations may be equitably tolled by a taxpayer's mental incompetence; (2) the disease of alcoholism can create the sort of mental incompetence necessary for equitable tolling; and (3) the taxpayer's alcoholism was sufficiently severe to cause him to be mentally incompetent such that the statute of limitations was equitably tolled from the time his tax return was due to the time he actually filed the return. In addition to the Scott case, two other district courts have extended the doctrine of equitable tolling to tax refund claims. (See Wiltgen v. United States, 813 F.Supp. 1387 (N.D. Iowa 1992); see also Johnsen v. United States, 758 F.Supp. 834 (E.D.N.Y. 1991).)

Despite these cases, however, the more recent weight of authority rejects the application of equitable tolling to tax refund cases. The Courts of Appeals in both the First and Eleventh Circuits have held that the statute of limitations imposed by Internal Revenue Code section 6511 is inflexible and may not be equitably tolled. (See Oropallo v. United States, 994 F.2d 25, cert. den., 114 S.Ct. 705 [126 L.Ed.2d 671] (1994) (mental incompetency of taxpayer does not toll statute of limitations); see also Vintilla v. United States, 931 F.2d 1444, reh'g., en banc, den., 942 F.2d 798 (11th Cir. 1991) (general principles of equity may not override statutory requirements for timely filing of tax

refund claims).) Further, the United States District Court for the Central District of California has recently held that the doctrine of equitable tolling is inapplicable to tax refund claims, adopting the reasoning of Oropallo and Vintilla. (See Brockamp v. United States, 859 F.Supp. 1283 (C.D. Cal. 1994).)

After reviewing the analysis in the federal cases, we too find that the reasoning of the appellate courts is more compelling. Their analysis is also consistent with this board's previous cases, in which we have held that the statute of limitations set forth in former section 19053 is strictly construed and a taxpayer's failure, for whatever reason, to file a claim for refund within the statutory period bars him from doing so at a later date. (Appeal of Richard M. and Claire P. Hammerman, Cal. St. Bd. of Equal., Dec. 13, 1983.) Neither ill health of a taxpayer nor any other unfortunate circumstance will excuse a late filing of a claim for refund. (See Appeal of Harry O. Nylén, Cal. St. Bd. of Equal., Sept. 21, 1982.) Accordingly, we continue to hold that the statute of limitations cannot be equitably tolled by a taxpayer's mental incompetency. Therefore, we conclude that appellants' claims for refund for 1983, 1984 and 1985 were not timely.

The second issue is whether respondent properly imposed penalties for appellants' failure to file a timely return and for their failure to file after notice and demand. Former sections 18681 and 18683 (amended and renumbered to sections 19131 and 19133, respectively, operative January 1, 1994) required the imposition of such penalties unless it was shown that such failure was due to reasonable cause and not due to willful neglect. In order to establish reasonable cause, appellants bear the burden of proving that their failure to file occurred notwithstanding their exercise of ordinary business care and prudence. (Appeal of Byron C. Beam, Cal. St. Bd. of Equal., June 29, 1978.)

Appellants contend that appellant-husband's alcoholism constitutes reasonable cause. Although illness may constitute reasonable cause if it can be shown that the taxpayer is prevented from filing a return, appellants have offered no evidence to show that appellant-husband's alcoholism continuously incapacitated both appellant-husband and appellant-wife from filing their returns for the years in question. (See Appeal of Michael J. and Diane M. Halaburka, Cal. St. Bd. of Equal., Apr. 9, 1985.) In fact, appellant-husband states, in his sworn declaration dated October 9, 1990, that in 1983 he entered an alcohol dependency outpatient program and was sober for almost seven years thereafter. Additionally, despite appellant-husband's alcoholism, both appellants continued working and conducted their personal and business activities. While we recognize that appellant-husband's alcoholism was a great stress on appellants, we cannot conclude that this illness prevented both appellants from filing a timely return or from filing after the notice and demand.

Moreover, appellants contend that respondent improperly imposed the negligence penalties. Former section 18684 (amended and renumbered to section 19164, operative January 1, 1994) provided that a penalty shall be assessed when any part of a deficiency is due to negligence or intentional disregard of rules or regulations. In the present case, appellants were aware of the requirement to file their returns by the extended due date in each taxable year and had the documents they needed to file their returns at their immediate disposal. Yet, appellants failed to file timely returns and failed to file after notice and demand. Therefore, appellants' intentional disregard of the rules and regulations for filing returns is sufficient to warrant the imposition of the negligence penalties.

The last issue presented is whether interest should be abated. This board has previously held that the imposition of interest on a deficiency is mandatory. (Rev. & Tax. Code, § 18688, amended and renumbered to § 19104, operative January 1, 1994.) Interest is not a penalty imposed on the taxpayer; it is merely compensation for the use of money. (Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 22, 1976.)

For the reasons expressed above, respondent's actions are sustained.

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 19333 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Earl W. and Patricia A. McFeaters for refund of personal income tax in the amount of \$1 or more for the years 1983 through 1990 be and the same is hereby modified to reflect the concessions of the Franchise Tax Board. In all other respects, the action of the Franchise Tax Board is hereby sustained.

Done at Sacramento, California, this 30th day of November, 1994, by the State Board of Equalization, with Board Members Mr. Sherman, Mr. Fong and Ms. Scott present.

Brad J. Sherman_____, Chairman

Matthew K. Fong_____, Member

Windie Scott*_____, Member

_____, Member

_____, Member

*For Gray Davis, per Government Code section 7.9.

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