

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
WALLY H. AND MARIA TERESA ASQUITH)

For Appellants: Maria Teresa Asquith, in pro. per.  
For Respondent: Bruce W. Walker  
Chief Counsel  
Jacqueline W. Martins  
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 **Wally H.** and Maria Teresa Asquith against a proposed assessment of additional personal income tax of **\$1,227.93**, including penalty, for the year 1972.

Appeal of Wally H. and Maria Teresa Asquith

In 1976 the Internal Revenue Service reported to respondent that appellants had improperly deducted a carryover net operating loss of \$23,036.00 in arriving at their adjusted gross income on their 1972 federal return. The same amount of adjusted gross income appeared on both federal and state returns. Respondent thereafter issued its proposed assessment on the basis of the federal report, stating that the net operating loss carryover was not allowable for state income tax purposes. In addition, respondent imposed a 5 percent penalty for late filing of appellants' state return.

Appellants requested that respondent withhold further action until appellants' federal tax liability was finally determined. However, respondent affirmed the assessment because even a result favorable to appellants at the federal level would not authorize the deduction under California law. This appeal followed..

The issues presented are: (1) whether respondent properly disallowed the net operating loss carryover; (2) whether respondent properly imposed a late filing penalty; and (3) whether appellants must pay interest on the proposed assessment.

At the time the appeal was filed, appellants' dispute with federal authorities had not been resolved but it is clear that our decision here may be made on independent grounds. It is well established that a determination by respondent that a deduction should be disallowed is presumed correct (Appeal of Robert V. Erilane, Cal. St. Bd. of Equal., Nov. 12, 1974), and the burden of proving entitlement to the deduction is on the taxpayer (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L.Ed. 1348] (1934)). However, appellants cannot meet that burden in this case because there simply is nothing in California law which provides for the deduction in question. This board has no authority to apply a federal provision to determine California tax liability, nor can we change the existing law. Therefore, the assessment must be upheld. (Appeal of John A. and Barbara J. Vertullo, Cal. St. Bd. of Equal., July 26, 1976; see also, Appeal of Jackson Appliance, Inc., Cal. St. Bd. of Equal., Nov. 6, 1970.)

With respect to the late filing penalty imposed under Revenue and Taxation Code section 18681, appellants have failed to present any evidence showing that their failure to file on time was due to reasonable cause rather than due to willful neglect. Therefore the penalty must be upheld. Further, the imposition of interest is mandatory under Revenue and Taxation Code section 18688 and this board has no authority to waive that requirement. (Appeal of James B. and Katherine M. Beckham, Cal. St. Bd. of Equal., June 28, 1977.)

Appeal of Wally H. and Maria Teresa Asquith

For the above reasons, respondent's action in this matter must be 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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Wally H. and Maria Teresa Asquith against a proposed assessment of additional personal income tax of \$1,227.93, including penalty, for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of June, 1979, by the State Board of Equalization.

*William H. Brown*, Chairman  
*Robert J. [unclear]*, Member  
*John [unclear]*, Member  
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