BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of	)	Nos. 81R-633 and 81R-726
	)	
J. B. AND P. R. CAMPBELL	)	

For Appellants: Jack B. Campbell
Campbell Enterprises

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

These appeals are 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 J. B. and P. R. Campbell for refund of personal income tax in the amounts of $1,169.33 and $346.11 for the years 1979 and 1980, 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.

The issue presented on appeal is whether respondent properly imposed penalties for underpayment of tax due for the years in question.

Appellants are husband and wife. Due to the alleged inability to procure accounting records from several of their investments in a timely manner, appellants requested, and were granted, extensions to file their personal income tax returns for the years in question. On each application for extension, appellants reported that they expected to owe an amount of tax less than the amount that had been withheld for that year, $19,000 and $28,000 for 1979 and 1980, respectively.

Appellants subsequently filed timely returns for both years, reporting $39,018 and $34,333 total tax liability for 1979 and 1980, respectively. Respondent issued notices of tax due for each year and imposed penalties for both years for the underpayment of tax due. Appellants paid the assessments and subsequently filed two claims for refund for the amount of penalties paid. The claims for refund were denied and this appeal followed.

Section 17041, subdivision (a), imposes a personal income tax upon the entire taxable income of every resident of this state. Section 18551, insofar as is pertinent to appellants, provides that the tax imposed under section 17041 "shall be paid on the fifteenth day of April following the close of the calendar year." Respondent is statutorily authorized to grant reasonable extensions of time for the filing of a return. (Rev. & Tax. Code, § 18433, subd. (a).) The granting of such an extension, however, does not operate to extend the time for the payment of any tax due. (Cal. Admin. Code, tit. 18, reg. 18433.1, subd. (b)(6).)

If a taxpayer fails to pay the tax that is due, section 18684.2 provides the following penalty:

> (a) In case of failure to pay the amount shown as tax on any return specified in this part on or before the date prescribed for payment of such tax . . . <u>unless it is shown that such failure is due to reasonable cause and not due to willful neglect</u>, a penalty is hereby imposed consisting of: (1) 5 percent of the total tax unpaid (as defined in subdivision (c)), and (2) an amount computed at the rate of 0.5 percent per month of the "remaining tax"

> (as defined in subdivision (d)) for each month during which the tax is unpaid (not exceeding 36 months).
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> * * *
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> (c) [T]otal tax unpaid means the amount of tax shown on the return reduced by (1) the amount of any part of the tax which is paid on or before the date prescribed for filing the return, and (2) the amount of any credit against the tax which may be claimed upon the return.
>
> (d) "[R]emaining tax" means total tax unpaid reduced by the amount (if any) of any payment of the tax. (Emphasis added.)

Appellants failed to pay their total tax liability for the years 1979 and 1980 until after the April 15 due date following the close of each year. Consequently, respondent's imposition of the penalty for late payment of the tax was proper, unless the untimely payments were due to reasonable cause and not willful neglect. (Rev. & Tax. Code, § 18684.2, subd. (a).) Appellant bears the burden of proving that both of those conditions existed. (Appeal of Roger W. Sleight, Cal. St. Bd. of Equal., Oct. 26, 1983; Appeal of M. B. and G. M. Scott, Cal. St. Bd. of Equal., Oct. 14, 1982.) In order to establish reasonable cause, the taxpayer must show that his failure to timely pay the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (Appeal of Roger W. Sleight, supra; Appeal of M. B. and G. M. Scott, supra.) Where a taxpayer has not shown that his failure to file was due to reasonable cause and not willful neglect, we must assume that the penalty applies. (Appeal of Woodview Properties, Inc., Cal. St. Bd. of Equal., Oct. 10, 1984; Appeal of Valley View Sanitarium and Rest Home, Inc., Cal. St. Bd. of Equal., Sept. 27, 1978.)

Appellants state that much of the missing information necessary to accurately complete their tax returns for the appeal years came from partnerships where someone other than appellants had the responsibility of keeping the financial records. Appellants were allegedly told that the information would not be available until after the April 15 filing deadline for each of the years in question. Appellants contend that this was a diligent

attempt to secure the necessary information and is reasonable cause for their failure to pay the tax due.

Appellants offer us nothing more than the above to support their statement that they "diligently attempted to secure" the information necessary to complete the returns. There was no showing that appellants attempted to contact any of the partnerships to procure copies of their financial records. There is no evidence that appellants even attempted to secure a rough estimate of the partnerships' finances. Further, appellants' contention is especially unpersuasive for 1979 when much of the necessary information was readily accessible.

The majority of the differences between appellants' 1979 estimated and reported income was related to the activities of a partnership of which Mr. Campbell was 50-percent owner. Appellants' extension for filing their tax return estimated an anticipated loss by the partnership which never materialized and failed to account for the sale of real property by the business. Yet, all of the events which would have determined appellants' tax liability for 1979 occurred before April 15, 1980. As 50-percent owner of the partnership, Mr. Campbell had access to all the pertinent information necessary to make an accurate estimation of the taxes appellants owed. The fact that the computations may have been complex is irrelevant. We have held that the complexity and problems in accumulating the information necessary to complete a return is not reasonable cause for the failure to pay tax that is due. (See, e.g., Appeals of Dynamic Speaker Corp., et al., Cal. St. Bd. of Equal., June 27, 1984; Appeal of Incom International, Inc., Cal. St. Bd. of Equal., Mar. 31, 1982; Appeal of Avco Financial Services, Inc., Cal. St. Bd. of Equal., May 9, 1979; Appeal of Telonic Altair, Inc., Cal. St. Bd. of Equal., May 4, 1978.) In light of these facts and the lack of substantiation that appellants "diligently attempted to secure" the necessary information, we do not believe that appellants have satisfied their burden of proof.

Consequently, we find that appellants have not established that their failure to pay their tax liability in full by the return due date was due to reasonable cause. Accordingly, respondent's action in this matter will be sustained.

Appeals of J. B. and P. R. Campbell

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 J. B. and P. R. Campbell for refund of personal income tax in the amounts of $1,169.33 and $346.11 for the years 1979 and 1980, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of October, 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

Ernest J. Dronenburg, Jr., Chairman

Conway H. Collis, Member

William M. Bennett, Member

Richard Nevins, Member

Walter Harvey*, Member

*For Kenneth Cory, per Government Code section 7.9