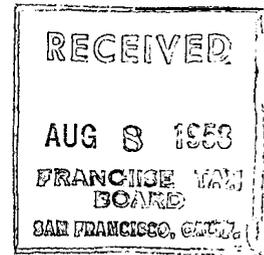




BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
WESLEY G. POPE)

Appearances:

For Appellant: Wesley G. Pope, in pro. per.

For Respondent: Burl D. Lack, Chief Counsel;
John S. Warren, Associate Tax Counsel;
Cleo M. Gray, Junior Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Wesley G. Pope for refund of personal income tax, interest and penalties in the total amounts of \$102.95, \$57.51, \$47.56 and \$79.49 for the years 1946, 1947, 1948 and 1949, respectively.

Appellant and his former wife, who were residents during the years in question, filed joint returns for each year with both the State and Federal authorities, showing income from various beauty shops.

Upon discovering that the Federal authorities had made deficiency assessments for the years 1946 through 1949, the Franchise Tax Board on December 31, 1951, issued notices of proposed additional assessments to Appellant and his wife for the years 1946 and 1947. These were protested and the Franchise Tax Board issued notices of action on the protests in April, 1953, adjusting the assessments in accordance with adjustments made by the Federal authorities for those years.

In April, 1953, the Franchise Tax Board issued jeopardy assessments against Appellant and his wife for the years 1946 through 1949. The jeopardy assessments differed from the proposed additional assessments for 1946 and 1947, as revised by the notice of action on Appellant's protests, only in the addition of fraud penalties. The jeopardy assessments became final on April 28, 1953.

In February, 1954, in response to a demand by the Franchise Tax Board for payment of the jeopardy assessments, Appellant mailed to the Franchise Tax Board a check for \$167.95 on which he had written "accepted as payment in full for income

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taxes for the year 1946-1947-1948-1949." On the following day, Appellant was notified by his employer that the Franchise Tax Board had attached his wages for \$286.95, the full amount of all of the assessments including interest to that date. The Franchise Tax Board credited Appellant's check to his account and when it later received the sum attached from his wages it refunded the excess.

Appellant does not question the assessments of tax and penalties in so far as they apply against his wife. He argues (1) that he is not liable because the assessments are based on separate income of his former wife earned by her outside of California prior to their marriage, and (2) that the Franchise Tax Board accepted \$167.95 as full payment for all of the years in question.

With respect to the first contention, the law is that each spouse is liable jointly and severally for any deficiency or penalty in connection with a joint return filed by them (Section 18555 of the Revenue and Taxation Code; Myrna S. Howell, 10 T.C. 859, affd. 175 Fed. 2d 240).

Appellant's position that the assessments in question are based upon income earned by his wife without California and prior to their marriage apparently derives from a misunderstanding of the net worth method used by the Federal authorities in determining income for the years involved. His position is totally unsupported by evidence. He and his former wife were California residents and married to each other during all of the years for which these assessments were made. There is nothing before us to uphold a conclusion that their combined income taxable in this State for those years was less than that determined by the Franchise Tax Board.

We also find that Appellant's second contention is without merit. There is authority in Section 19132 of the Revenue and Taxation Code for the Franchise Tax Board to enter into final settlement agreements with taxpayers. That section provides that the Franchise Tax Board or any person authorized by it in writing may enter into a written agreement in respect to taxes and that the agreement is conclusive when approved by the State Board of Control. This section is substantially the same as Section 7121 of the United States Internal Revenue Code of 1954 (formerly 3760 of the 1939 Code).

As concluded by the Federal courts, any agreement in the nature of a compromise must follow the statutory requirements. A compromise is not effected by the acceptance of a check marked "payment in full" or with words of similar import (Ray Howard, T.C. Memo., Dkt. No. 55034, September 27, 1956; Hughson v. U.S., 59 Fed. 2d 17, cert. den. 287 U.S. 630; Victoria R. Johnston, 19 B.T.A. 630).

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We conclude that the position of the Franchise Tax Board must be upheld.

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 Wesley G. Pope for refund of personal income tax, interest and penalties in the total amounts of ~~\$102.95~~, ~~\$57.51~~, \$47.56 and ~~\$79.49~~ for the years 1946, 1947, 1948 and 1949, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of July, 1958, by the State Board of Equalization.

George R. Reilly _____, Chairman

J. H. Quinn _____, Member

Robert E. McDavid _____, Member

Paul R. Leake _____, Member

_____, Member

ATTEST: Dixwell L. Pierce _____, Secretary