



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CHRIS T. AND ARVA THEOPHELOS)

Appearances:

For Appellants: Walter Leong, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
Wilbur F. Lavelle, Assistant 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 Chris T. and Arva Theophelos to a proposed assessment of additional personal income tax in the amount of \$1,081.42 for the year 1954.

Appellants are husband and wife. They live in the vicinity of Los Angeles. In 1954, they realized a gain from the sale of stock. They obtained from the Franchise Tax Board an extension of time to July 15, 1955, for filing their 1954 return. The return, which reported the gain from the sale of the stock on the installment method pursuant to Section 17532 (now 17578) of the Revenue and Taxation Code, was received by the Franchise Tax Board in Sacramento on July 29, 1955. The envelope enclosing it was not retained by the Franchise Tax Board. On the return, Appellants computed interest on the tax for 105 days from April 15, 1955. A check dated July 15, 1955, for the amount of the tax plus the interest, accompanied the return. It is undisputed that it ordinarily requires two days to deliver a letter from Los Angeles to Sacramento.

The Franchise Tax Board determined that Appellants were not entitled to report their gain on the installment method since they did not make their election in a timely return, on or before July 15, 1955. The Franchise Tax Board therefore included the entire gain in Appellant's income for the year in question.

At the hearing of this matter, Milton J. Dean, an accountant for 30 years, who had prepared Appellant's tax returns for 12 years, testified that he prepared the return and check and gave them both to Appellants on or before the due date. He stated that it was his custom to prepare envelopes for returns and to address them to the Los Angeles office of the Franchise Tax Board. With respect to his computation of interest on the tax in question, he stated that he must have automatically

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computed it to the end of the month of July rather than to July 15 without giving the matter serious thought.

Appellant Chris Theophelos testified that he mailed the return on or before July 15, 1955, but that he was not sure whether it was addressed to Los Angeles or to Sacramento. He stated that his returns had never previously been late.

In addition to contending that this return was timely, Appellants argued strenuously that the Franchise Tax Board was negligent in failing to retain the envelope in which their return was mailed. This argument is based upon Section 11003 of the Government Code, which provides that a tax return is deemed to have been filed on the date shown by the cancellation mark on the envelope. We need not discuss this point in detail, however. It is unquestionable that a return is deemed filed as of the date it is mailed (Title 18, California Administrative Code, Reg. 1&31-18433(a)) and we are persuaded that this return was mailed in time.

The Franchise Tax Board emphasizes that interest was computed on the return for 105 days from April 15, 1955, and that July 29, 1955, the date the return was received in Sacramento, is just 105 days from April 15. The interest at stake, however, amounted to only a few cents and one would not expect a great deal of care in ascertaining the exact number of days involved. If care were scrupulously exercised, in fact, the interest would have been computed to the date of mailing and not to the uncertain date when the return might arrive. In our opinion, the method used to calculate the interest can be of no greater significance than the timely date of the check which paid the interest. Both the return and the check were prepared by the same person. It is unlikely that a person attempting to conceal tardiness would pre-date the check and expose himself by calculating interest to a later date.

The Franchise Tax Board also stresses the fact that the return would ordinarily be received in Sacramento within two days after mailing it from Los Angeles. The testimony of Appellant's accountant, however, indicates that the return was mailed to Los Angeles. The time lag can thus be explained by a delay in transmitting it to Sacramento.

We have no reason to doubt the credibility of the testimony of Appellant Chris Theophelos or that of his accountant. Their testimony establishes to our satisfaction that the return was mailed in time.

In addition to its action with respect to the question of timeliness, the Franchise Tax Board has disallowed a deduction of

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\$51.18 for medical expenses. Appellants concede that the disallowance was proper.

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 Chris T. and Arva Theophelos to a proposed assessment of additional personal income tax in the amount of \$1,081.42 for the year 1954 be and the same is sustained as to the disallowance of the medical expense deduction. In all other respects the action of the Franchise Tax Board is reversed.

Done at Sacramento, California, this 6th day of April, 1961, by the State Board of Equalization.

John W. Lynch, Chairman

Geo. R. Reilly Member

Alan Cranston, Member

Paul R. Leake, Member

Richard Nevins, Member

ATTEST: Dixwell L. Pierce, Secretary