



COMPROMISE PAYMENT
DOES CASHING TP'S CHECK
CONSTITUTE ACCEPTANCE OF TP'S OFFER?

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

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STATE BOARD OF EQUALIZATION

In the Matter of the Appeal of)
ASA V. WILDER)

For Appellant: Asa V. Wilder, in pro. per.

For Respondent: James T. Philbin, 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 claim of Asa V. Wilder for refund of personal income tax in the amounts of \$46.09, \$36.11 and \$7.98 for the years 1953, 1954 and 1955, respectively.

After notice of proposed assessments of additional tax for the years in question had been issued, exchanges of correspondence between Appellant and the Franchise Tax Board resulted in agreement to adjustments which would reduce but not wholly eliminate the proposed assessments. Certain other points remained unsettled. In the course of continued correspondence Appellant mailed a letter to the Franchise Tax Board containing a check for \$50, offered as a compromise settlement in full of his tax liability. The reverse side of the check carried the following inscription:

Endorsement constitutes acceptance by the Franchise Tax Board as payment in full of proposed assessments for the years 1953, 1954 and 1955.

The Franchise Tax Board endorsed and cashed the check, crediting the proceeds to Appellant's account. About ten days later it sent a letter to Appellant stating, "This letter is to be considered as a specific rejection of your offer." In the following month, the Franchise Tax Board mailed formal notices of action affirming the proposed assessments in the amounts now in question. Appellant thereafter paid these amounts.

Appellant now presses his claim for refund, contending that the Franchise Tax Board should be held to have accepted the \$50 check in settlement of the entire liability for the years in question.

Appeal of Asa V. Wilder

This issue was decided in the Appeal of Wesley G. Pope, Cal. St. Bd. of Equal., July 22, 1958, 2 CCH Cal. Tax Cas. Par. 200-906,3 P-H State & Local Tax Serv. Cal. Par. 58125:

. . .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)..

Appellant argues that his case is distinguishable because his check was accepted before the amount of the tax had been definitely determined. That this is not a controlling factor is demonstrated by the leading federal decision on tax compromises, Botany Worsted Mills v. United States, 278 U.S. 282. There a compromise preceded and formed the basis for an assessment and yet the compromise was held ineffective because it did not follow the terms of the statute. (See also, L. Loewy & Son, Inc. v. Commissioner, 31 F. 2d 652.)

It is also stated by Appellant, without further elaboration that he has been injured in that he has been prevented from appealing to set aside the entire amount involved in the case and not just the amount involved in this appeal. We see nothing, however, that prevented Appellant from claiming a refund of the entire amount paid by him and appealing upon any grounds that he may have had in addition to his compromise theory.

Appeal of Asa V. Wilder

O R D E R

Fursuant 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 claim of Asa V. Wilder for refund of personal income tax in the amounts of \$46.09, \$36.11 and \$7.98 for the years 1953, 1954 and 1955, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 13th day of December, 1961, by the State Board of Equalization.

John W. Lynch, Chairman
Geo. R. Reilly, Member
Paul R. Leake, Member
_____, Member
_____, Member

ATTEST: Dixwell L. Pierce, Secretary