



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the matter of the Appeal of)
HERMINE M. ARNOLD)

For Appellant: Hermine M. Arnold, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Richard C. Creeggan
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 Hermine M. Arnold for refund of personal income tax and interest in the total amount of \$133.19 for the year 1969.

The issue to be decided is whether appellant underpaid her 1969 income tax liability and thereby became ineligible for the special tax credit provided by former section 17065 of the Revenue and Taxation Code.

As of June 15, 1969, appellant had not paid the \$19.66 balance on a deficiency assessed against her with respect to the year 1965. The \$19.66 represented interest on a delinquent tax and the appellant had refused to pay

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the same. On June 15, 1969, there was subtracted from a property tax relief payment due to appellant the sum of \$23.03. The amount should have been \$19.66. The difference gives rise to respondent's concession that appellant is now entitled to a refund of \$3.37 plus interest.

In the meantime, appellant had paid \$817.97 on her estimated income tax for 1969. When she filed her 1969 return she took credit for payment on estimated tax of \$841. The difference between the payment made and the payment claimed is exactly \$23.03. Appellant thereby underpaid her self-assessed income tax for 1969. This was done even though the assessment for 1965 had become final and the liability had been fixed. The tax had been calculated using a special tax credit of \$100 for a single person as provided by former section 17065 of the Revenue and Taxation Code.'

Respondent determined that the underpayment of tax made appellant ineligible for the special tax credit under the terms of former section 17065, subdivision (c), and issued a notice of deficiency in the amount of \$133.19 for tax and interest. Appellant paid the full amount and submitted a claim for refund. Respondent denied the claim and this appeal followed.

We have no hesitation in finding that appellant did underpay her 1969 income tax. The record speaks for itself and it is not necessary to belabor this point. With respect to appellant's eligibility for the special tax credit, former section 17065 provided in part:

(c) In order to claim the special tax credit allowed under subdivision (a), the taxpayer must first pay the entire amount of the net tax liability ... on or before the due date of the return... unless the taxpayer's failure to pay or file a timely return was due to reasonable cause and not due to willful neglect.

Since the taxpayer did not pay the entire amount of the net tax liability, the question remaining is whether appellant's failure to pay was due to reasonable cause and not due to willful neglect.

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It is established that both reasonable cause and absence of willful neglect must be satisfied. (Rogers Hornsby, 26 B.T.A. 591.) The burden of proof on a challenge to a determination of a taxing agency is on the taxpayer. (Welch v. Helvering 290 U.S. 111 [78 L. Ed. 212].) It is generally recognized that a reasonable cause is one which would lead a normally prudent person in similar circumstances to act in the same manner.

Here appellant does not attack respondent's action in connection with her 1969 tax directly. Instead she argues that she was justified in not paying her total 1969 tax liability because she was attempting to recover an allegedly unfair imposition of interest by respondent. Appellant's unilateral action does not appear to have been a prudent one. The 1965 matter was a closed issue at the time appellant failed to pay her 1969 tax liability. Her action was not reasonable when weighed against the circumstances prevailing at the moment; and furthermore, her comments as shown in the record clearly indicate that her action was a willful one.

We must conclude that respondent acted correctly in disallowing the special tax credit because appellant had failed, willfully and without reasonable cause, to pay her full net tax liability on or before the due date.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and appearing therefor, good cause

