

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
ALEXANDER F. McCARTHY )

For Appellant: Alexander F. McCarthy, in pro. per.  
For Respondent: Jon Jensen  
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Alexander F. McCarthy for refund of negligence penalty in the amount of \$92.79 for the year 1975.

Appeal of Alexander F. McCarthy

The issue presented is the propriety of the action of the Franchise Tax Board in imposing a negligence penalty solely on the basis of corresponding federal action.

Appellant filed a return for 1975 wherein he reported interest income of \$3,438 and dividend income of \$1,049.1/ He declared this same income federally, with allowance for a federal \$100 dividend exclusion not in force in California.

Thereafter, the Internal Revenue Service audited appellant's federal return, increasing appellant's dividend and interest income by the total amount of \$17,470. The service also assessed a five percent negligence penalty pursuant to section 6653, subsection (a) of the Internal Revenue Code of 1954.

Respondent, in conformity with the federal action, added \$17,470 to appellant's California income for 1975, and assessed a five percent negligence penalty.

Appellant paid the resulting assessment, but then filed a claim for refund of the negligence penalty. Respondent denied the claim and appellant appealed.

It is well established that a deficiency assessment, as well as a negligence penalty, issued or imposed by respondent on the basis of corresponding federal action is presumed to be correct, and the burden is upon the taxpayer to show otherwise. (Appeal of John A. and Barbara J. Vertullo, Cal. St. Bd. of Equal., July 26, 1976; Appeal of Casper W. and Svea Smith, -Cal. St. Bd. of Equal., April 5, 1976.)

Appellant offers the following reasons in support of his objection to the penalty assessment:

1. Respondent did not assess a negligence penalty for 1976 or 1977;
2. Appellant did not ask the Internal Revenue Service to withdraw the penalty;
3. Appellant is 71 years old; and

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1/ It is noted by respondent that while reporting \$1,049 on his dividend schedule, appellant reported dividend income of \$1,062 on the main 540 form. Respondent therefore agrees to refund tax in the amount of \$1.43, plus interest, to reflect the deviation.

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4. It is possible appellant never received his Form 1099's. (Corporations paying dividends are required to send a Form 1099-DIV to all shareholders to whom they have paid dividends federally.)

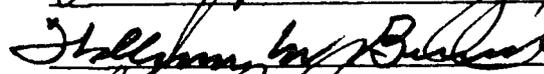
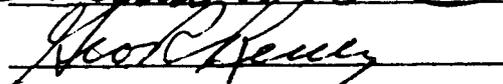
None of the above reasons show that the federal action or that respondent's action was erroneous, improper, or otherwise incorrect. Accordingly, we conclude that appellant has failed to carry the burden of proving the negligence penalty erroneous. Respondent's action in this matter must be upheld.

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 claim of Alexander F. McCarthy for refund of negligence penalty in the amount of \$92.79 for the year 1975, be and the same is hereby modified to reflect the conceded refund of \$1.43 plus interest. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 4th day of March , 1980, by the State Board of Equalization.

  
\_\_\_\_\_, Chairman  
  
\_\_\_\_\_, Member  
  
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