



Appeal of Mitchell B. Valentine

Respondent determined that appellant had not filed a personal income tax return for 1974. Thereafter, respondent obtained information concerning appellant's income for that year from the records of the Employment Development Department. This information was also verified with appellant's employer during the appeal year. Based upon this information respondent issued a timely notice of proposed assessment of tax and a 25 percent delinquent filing penalty. The notice was sent to the address of appellant's employer and was not forwarded to appellant promptly. Ultimately, respondent withdrew the original notice to protect appellant's appeal rights, and issued a second timely notice which was sent to appellant's home address. Respondent also sent appellant a letter explaining its action. During the course of these proceedings respondent has stated that it will apply the \$77.73 in California withholding tax which was withheld from appellant's 1974 wages against any deficiency that is determined to exist.

Appellant contends that errors existed in both of respondent's notices and that he was not required to file a return for 1974. He also argues that since the first notice was not sent to his home address, the interest assessed by respondent is incorrect and unfair.

It is settled law that respondent's determination of tax and penalty for failure to file a return are presumptively correct, and that the taxpayer bears the burden of proving them erroneous. (Appeal of David and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977; Appeal of Sarkis N. Shmavonian, Cal. St. Bd. of Equal., April 6, 1977.) Despite opportunities and requests to produce any available evidence tending to prove that respondent's determinations were erroneous in any respect, appellant has failed to submit any factual information at all. Appellant, therefore, has left us with no alternative but to conclude that respondent's computation of his tax liability was proper and correct in every respect, and that the penalty was fully justified.

With respect to the interest on the deficiency, section 18688 of the Revenue and Taxation Code provides that interest on a deficiency shall be assessed and paid at the prescribed rate from the date prescribed for the payment of the tax until the date the tax is paid. The interest is not a penalty imposed on the taxpayer: it is merely compensation for the use

Appeal of Mitchell B. Valentine

of money. (Appeal of Audrey C. Jaegle, Cal. St. Bd. of Equal., June 26, 1976.) The language of section 18688 is clear and mandatory, and this board is not empowered to waive statutory interest accruing on an unpaid deficiency assessment. (See Appeal of Audrey C. Jaegle, supra; Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal., Aug. 1, 1974.)

For the reasons stated above, respondent's action in this matter must be sustained.

