



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
DOYLE H. FLOCK )

OPINION ON PETITION FOR REHEARING

On March 2, 1981, we sustained the action of the Franchise Tax Board on the protest of Doyle H. Flock against a proposed assessment of additional personal income tax and penalties in the total amount of \$2,182.17 for the year 1977. A timely petition for rehearing has been filed by appellant pursuant to section 18596 of the Revenue and Taxation Code.

Shortly before we issued our original decision in this matter, appellant filed a proper, though delinquent, 1977 return. Respondent has examined the return, and has advised us that it will accept the return as correctly stating appellant's tax liability. As a result of this concession, respondent has reduced the proposed assessment by \$110.01 in tax and \$69.82 in penalties.

The only other matter requiring discussion is appellant's objection to the negligence penalty and to the double penalty assessments for delinquent filing and failure to file after notice and demand. In substance, appellant's argument is that his previous refusals to file a proper return should be excused because he acted in reasonable reliance on the advice of the leaders of Your Heritage Protection Association, as well as on that of lawyers employed by that organization.

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Either of the penalties imposed by Revenue and Taxation Code sections 18681 and 18683 (for failure to file a timely return and failure to file after notice and demand, respectively) may be excused if the taxpayer establishes that the failure to file was due to reasonable cause and not due to willful neglect. In this context, "reasonable cause" means the exercise of ordinary business care and prudence, or such cause as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (See Appeal of Estate of Anna Armstrong, Deceased, Cal. St., Bd. of Equal., Oct. 27, 1964; Treas. Regs. § 301.6651-1 (c)(1).) It has been held that a failure to file in reliance on the advice of a competent professional tax adviser constitutes "reasonable cause," provided that the adviser was fully informed of the relevant facts concerning the taxpayer's business affairs. (Burton Swartz Land Corp. v. Commissioner, 198 F.2d 558 (5th Cir. 1952); Appeal of Estate of Anna Armstrong, Deceased, supra.) Appellant is apparently seeking sanctuary under this rule, but the facts fail him. The record reveals that he earned wages of \$22,395 in 1977, an amount which clearly necessitated the filing of a return. (Rev. & Tax. Code, § 18401.) If he informed his advisers of these wages and they nevertheless advised him that a return wasn't necessary, they obviously were not competent in matters of taxation. If he **did not** inform them of his wages, they clearly weren't fully informed about his affairs. In either case, he was not entitled to rely on their advice not to file. Under these circumstances, we hold that **the failure to file penalties, imposed for two separate breaches of appellant's duty to file, were proper.**

With respect to the negligence penalty asserted under Revenue and Taxation Code section 18684, appellant has the burden of proving that his failure to file a timely return was due neither to negligence nor to an intentional disregard of rules and regulations. (Estate of Helena A. Meredith, ¶ 81,072 P-H Memo. T.C. (1981); see also Marcello v. Commissioner, 380 F.2d 499 (5th Cir. 1967).) Appellant has made no real effort to meet his burden, perhaps **because the admitted facts clearly show that his actions were negligent at the very least. Certainly, it would not be difficult to find that he intentionally disregarded respondent's rules and regulations, if such a finding were necessary to sustain this penalty.**

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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 18596 of the Revenue and Taxation Code, that the petition for rehearing of the appeal of Doyle H. Flock from the action of the Franchise Tax Board on his protest against a proposed assessment of additional personal income tax and penalties in the total amount of \$2,182.17 for the year 1977, be and the same is hereby denied, and that our order of March 2, 1981, be and the same is hereby modified to reflect respondent's concession. As so modified, our order of March 2, 1981, is affirmed.

Done at Sacramento, California, this 10th day of December, 1981, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Reilly, Mr. Bennett, Mr. Nevins and Mr. Cory present.

Ernest J. Dronenburg, Jr. , Chairman

George R. Reilly , Member

William M. Bennett , Member

Richard Nevins , Member

Kenneth Cory , Member