85-SBE-052

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
LLOYD AND NANCY ARNOLD)

For Appellants: June E. Landis

For Respondent: John A. Stillwell, Jr.
Counsel

OPINION

This appeal is made pursuant to section 19057, subdivision (a),[1] of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Lloyd and Nancy Arnold for refund of a penalty in the amount of $7,315.25 for the year 1981,

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

Appeal of Lloyd and Nancy Arnold

The sole issue in this appeal is whether respondent properly imposed a penalty for failure to timely file a personal income tax return,

Appellants, who are residents of Ohio, filed a nonresident personal income tax return for taxable year, 1981 on November 4, 1982, reporting their income from California business enterprises. They had not applied for an extension of time to file. Since their return had been due in April 1982, respondent imposed a penalty against appellants for failure to file a timely return, Appellants paid the penalty and filed a claim for refund, which was denied, resulting in this appeal.

Section 18681 provides a maximum penalty of 25 percent for taxpayers who fail to file timely returns "unless it is shown that the failure is due to reasonable cause and not due to willful neglect . . . ." This section is substantially the same as Internal Revenue Code section 6651(a)(l). Appellants contend that their failure to timely file should be considered due to reasonable cause because they relied on their accountant to ensure that all tax requirements were met. Their accountant apparently believed, erroneously, that it was'not necessary to request an extension of time to file from the Franchise Tax Board since an extension had already been granted by the Internal Revenue Service.

Both this board and the federal courts have held that the responsibility for filing a tax return is a nondelegable personal duty which cannot be avoided by placing the responsibility with an agent. (E.g., United States v. Kroll, 547 F.2d 393, 396-397 (7th Cir, 1977); Ferrando v. United States, 245 F.2d 582, 589 (9th Cir. 1957); Appeal of Samuel R. and Eleanor H. Walker, Cal. St. Bd. of Equal., Mar. 27, 1973; Appeal of William T. and Joy P. Orr, Cal. St. Bd. of Equal., Feb. 5, 1968.)

The United States Supreme Court has recently considered this very issue and set forth a "bright line' test for determining whether or not there existed reasonable cause for late filing in situations involving agents. In United States v. Boyle, -- U.S. --, -- [83 L.Ed.2d 622, 6321 (1985), the court concluded:

> It requires no special training or effort to ascertain a deadline and make sure that it is met. The failure to make a timely filing of a tax return is not excused by the taxpayer's reliance on an agent, and such reliance is not

"reasonable cause" for a late filing under § 6651(a)(l).

We believe that the error of appellants' accountant, in assuming that it did not need to request an extension of time to file, does not absolve appellants of their responsibility to comply with California requirements for filing. "To say that it was 'reasonable' for the [taxpayer] to assume that the [accountant] would comply with the statute may resolve the matter as between them, but not with respect to the [taxpayer's] obligations under the statute." (Emphasis in original.) (United States v. Boyle, supra, -- U.S. at -- [83 L.Ed.2d at 630].)

We find that appellants have not shown that their failure to timely file was due to reasonable cause, and, therefore, we will sustain respondent's denial of the claim for refund.

Appeal of Lloyd and Nancy Arnold

ORDER

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 Lloyd and Nancy Arnold for refund of a penalty in the amount of $7,315.25 for the year 1981, be and the same is hereby sustained.

Done at Sacramento, California, this 25th day of June, 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Nevins present.

Ernest J. Dronenburg, Jr., Chairman

Conway H. Collis, Member

William M. Bennett, Member

Richard Nevins, Member

_____ Member