



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
SAMUEL R. AND ELEANOR H. WALKER )

For Appellants: Robert H. Weir  
Attorney at Law

For Respondent: Crawford H. Thomas  
Chief Counsel

Marvin J. Halpern  
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 Samuel R. and Eleanor H. Walker for refund of penalty in the amount of \$175.50 for the year 1969.

The sole issue presented in this appeal is whether appellants had a reasonable cause to justify the late filing of their 1969 California personal income tax return.

The tax return in question was not filed until April 8, 1971, nearly a full year late. Appellants state that the return was late because it was misplaced during

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a "hectic" relocation of appellant Samuel Walker's professional offices which occurred at the time the return should have been mailed. When he later instructed his secretary to file it, she did not do so because she mistakenly believed that payment had to accompany the return. Dr. Walker became aware of this situation shortly before April 8, 1971, and mailed the return with the full amount of tax shown thereon plus interest at the rate of 6 percent per year. Upon receiving the return, respondent assessed a penalty of 25 percent for late filing. Appellant paid the penalty and filed a claim for refund. Respondent denied the claim and this appeal resulted.

Section 18681 of the Revenue and Taxation Code provides for a graduated penalty for late filing. The penalty, not to exceed 25 percent, is mandatory. To avoid penalty, the taxpayer must show that the delay was due to a reasonable cause and not to willful neglect. (C. Fink Fischer, 50 T.C. 164.)

Appellants seem to believe that the chain of mischances they relate constitutes a reasonable cause, and they ask this board to agree. This we cannot do. Reasonable cause exists if the failure to file occurs in spite of the exercise of ordinary business care and prudence. (Sanders v. Commissioner, 225 F.2d 629, cert. denied, 350 U.S. 967 [100 L. Ed. 839].) Under the given circumstances it seems clear that appellants failed to exercise even ordinary care in handling critical papers and in relying completely on appellant's secretary without any follow-up on her performance. The responsibility for filing income tax returns is a personal one and it cannot be delegated away. (Max Dritz, T.C. Memo, Aug. 27, 1969.)

Appellants argue that their conduct was not willful. However, both reasonable cause and absence of willful neglect must be satisfied. (Rogers Hornsby, 26 B.T.A. 591.)

Finally, appellants argue that the penalty imposed is overly harsh. Whatever merit there may be in this argument it should be addressed to the Legislature

