

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KENTON A. DEAN)

For Appellant: Kenton A. Dean,
in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Paul J. Petrozzi
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 Kenton A. Dean for refund of penalty and interest in the total amount of \$27.81 for the year 1970.

Appellant is single and is employed by the California Division of Highways as a civil engineer. He filed a 1969 California personal income tax return where- in his tax liability, prior to reduction for a special 10 percent tax credit, was listed as \$425.64.

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In 1970, respondent billed appellant in the amount of \$212.00. That sum represented the amount which respondent claimed appellant owed as estimated California income tax for the year 1970. When appellant failed to make payment by the prescribed date, he was billed an additional \$27.81 for underpayment of estimated tax. This sum consisted of a 10 percent penalty charge plus interest at the rate of 6 percent per annum.

Appellant filed a timely return for taxable year 1970, wherein his net tax liability was computed to be \$578.37. He paid this sum and also the \$27.81 penalty and interest assessment.

In October 1971, appellant filed a letter of protest with the Franchise Tax Board stating, in effect, that since he had paid his 1970 California income tax ". . . on the same day that most other people pay it," there should be no penalty assessment. He further voiced disagreement with the California estimated tax law, claiming that it was discriminatory.

In March 1972, appellant filed a claim for refund in the amount of \$27.81, contending that the penalty and interest he paid had been wrongly assessed and should therefore be refunded. Respondent's denial of appellant's claim gave rise to this appeal.

Section 18414 of the Revenue and Taxation Code provides:

For taxable years ending on or before November 30, 1972, a declaration of estimated tax must be filed if the estimated tax amounts to the lesser of the amounts stated in sub-divisions (a) and (b) --

(a) The tax paid for the preceding taxable year, provided it amounts to four hundred dollars (\$400) or more, in the case of a return by a single person and a joint return filed by a married couple, or two hundred dollars (\$200) or more in the case of a separate return filed by a married person, . . .

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It is appellant's contention that since he paid only \$383.08 in 1969 taxes (\$425.64 less a 10 percent tax credit), he does not fall within the mandates of the above section. We are unable to agree. As respondent correctly points out, the requirement for filing a declaration of estimated tax and the amount of estimated tax to be paid must be determined without regard to the special tax credit. (Rev. & Tax. Code, § 17068.)

In this case appellant's 1969 tax liability, computed without regard to the special tax credit allowed by section 17065 of the Revenue and Taxation Code, was \$425.64. He thus fell within the dictates of section 18414, subdivision (a), supra, and was required to file a declaration of estimated tax. Appellant also came within the purview of section 18556 of the Revenue and Taxation Code which states in part:

(a) Fifty percent of the amount of estimated tax, with respect to which a declaration is required under Section 18414, shall be paid within the period provided for filing the declaration under Section 18435....

The \$212.00 billed to appellant by the Franchise Tax Board in 1970 represented the amount specified in this section.

Having failed to file a declaration of estimated tax and pay such tax accordingly, appellant was liable for both the penalty and interest assessed against him. Section 18685.01 of the Revenue and Taxation Code states in part:

(a) In case of any underpayment of estimated tax required to be paid under Section 18556 by the date prescribed therein, ...with respect to declarations required by Section 18414, a penalty of 10 percent of the amount of the underpayment shall be added to the tax for the taxable year and shall be due and payable upon notice and demand from the Franchise Tax Board unless it is shown that such underpayment is due to reasonable cause and not due to willful neglect.

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Section 18685.03 goes on to say:

In the case of any underpayment of **estimated** tax required to be paid under Section 18556 by the date prescribed therein...with respect to declarations required by Section 18414, there shall be added to the tax for the taxable year interest at the rate of 6 percent per annum upon the amount of **underpayment...for** the period of the underpayment....

In the present case appellant has come forward with no evidence demonstrating reasonable cause for his failure to comply with the law. He argues only that he disagrees with the law, and that he believes it to be **discriminatory**. Since neither of these arguments establishes reasonable cause for **appellant's** inaction, respondent's denial of his claim for refund must be sustained.

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,

