



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
DOROTHY M. PAGE)

Appearances:

For Appellant: Dorothy M. Page, in pro. per.
For Respondent: Steven S. Bronson
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of Dorothy M. Page against proposed assessments of additional personal income tax in the amounts of \$97.06 and \$379.16, plus interest, for the years 1973 and 1974, respectively.

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On her California personal income tax returns for the years in question, appellant Dorothy M. Page claimed refunds for alleged overpayments of tax which had apparently been withheld from her salary. **Respondent** paid the requested refunds within a few months. **Respondent** **subsequently** audited the returns, however, and determined that appellant had erroneously deducted various expenses incurred in furthering her daughter's education and in seeking employment. It accordingly issued the proposed assessments in question, with interest accruing from the due dates of the returns.

Appellant appears to concede that the above mentioned items were nondeductible. She contends, however, that respondent may not now collect the additional tax or **the interest** charges because it has already issued a refund to her. She contends that respondent's payment of a claimed refund before conducting a thorough audit is "inexcusable negligence."

With respect to the tax liability, it has repeatedly been held that refunds of alleged excess withholding are a matter of grace to the taxpayer. They are made in reliance on the amount shown as due by the return, subject to final audit and adjustment, and therefore do not preclude a subsequent disallowance of deductions. (Clark v. Commissioner, 158 F.2d 851 (6th Cir., 1946); Richard E. Warner, T.C. Memo., Sept. 19, 1974.) In view of the fact that respondent receives millions of returns each year, and in view of the policy favoring rapid refunds of excess withholding to wage earners, we find no "inexcusable negligence" in respondent's actions.

Although we may sympathize with appellant, we must also hold for respondent on the issue of interest charges. Revenue and Taxation Code section 1868-8 specifically provides that interest on a deficiency

1/ Appellant's returns were dated February 8, 1974, and February 19, 1975, respectively, and the refunds were apparently made before the due dates of the returns.

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"shall be assessed, collected and paid in the same manner as the tax...." Under this section, payment of interest on unpaid deficiency assessments is mandatory. (Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal., Aug. 1, 1974.)

In Ross v. United States, 148 F.Supp. 330 (D. Mass., 1957), a case whose facts were quite similar to the instant appeal, the court stated:

Plaintiff argues that it is inequitable for the government to collect interest from him since he originally paid the tax and the government through its own mistake refunded his money. However, [the statute imposing interest charges] makes no exception from its requirement that interest be paid on all deficiencies from the date when the tax should have been paid. This interest is not a penalty imposed on the taxpayer but compensation for the use of the money. [Citation.] Even though taxpayer here did not request the refund made to him, and the situation is entirely due to an error on the part of the government, taxpayer and not the government has had the use of the money during the period involved and it is not unjustly penalizing taxpayer to require him to pay compensation for this use of the money. (148 F. Supp. at 333.)

Here appellant requested the refunds in question on her returns, and respondent paid the refunds in reliance on the amounts she reported as due. She has had the use of this money since the refunds were paid. The interest charges are therefore proper.

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,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, ~~that the~~ action of the Franchise Tax Board on the protests of Dorothy M. Page against proposed assessments of additional personal income tax in the amounts of \$97.06 and \$379.16, plus interest, for the years 1973 and 1974, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of May, 1977, by the State Board of Equalization.

John Bunker, Chairman
Philip George, Member
George Fuller, Member
_____, Member
_____, Member

ATTEST: A. A. Bell, Executive Secretary