

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
KEITH C. O'CONNOR)

Appearances:

For Appellant: Keith C. O'Connor, in pro. per.
For Respondent: David M. Hinman
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 protest of Keith C. O'Connor against a proposed assessment of additional personal income tax in the amount of \$175.11, plus interest, for the year 1974.

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The issue presented for our determination is whether the state should be estopped from asserting a proposed additional assessment, plus interest, because of misleading written instructions accompanying the 1974 state income tax return sent to appellant.

Appellant filed a timely California personal income tax return for 1974. In that return he claimed head of household status and computed his tax liability accordingly. He identified the individual qualifying him for such status as Cristine N. Foley, who lived with him and received more than one-half of her support from appellant during 1974. Ms. Foley bore no relationship to appellant other than as a friend.

Respondent disallowed appellant's claimed head of household status on the ground that Ms. Foley was not a dependent who qualified him for such status. This disallowance was based upon section 17044, subdivision (a), of the Revenue and Taxation Code, enacted in 1971, which precludes a taxpayer from being considered a head of household when the individual otherwise qualifying him is unrelated by blood or marriage. (Appeal of Stephen M. Padwa, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Judith A. Marshall, Cal. St. Bd. of Equal., May 10, 1977.) Respondent did allow appellant an \$8.00 dependent exemption credit for Ms. Foley.

Appellant alleges, **however**, that in completing his return for that year he relied upon statements in respondent's instruction pamphlet for the year 1974, mailed by respondent to appellant with the return.

Appellant explains that on the front of the 1974 instruction pamphlet was the **statement, "Head of Household Filing Status Redefined. See Page 6."** Appellant points out that he specifically examined the instructions pertaining to the eligibility for such status. Insofar as pertinent, the instructions stated that to qualify as head of household the taxpayer must have furnished over half the cost of maintaining a household occupied the entire year by himself and his "qualified dependent". The instructions indicated that a non-relative who was a member of the taxpayer's household for the entire taxable year, receiving less than \$750 income for the year and more than one-half of his or her support from the taxpayer, was a qualified dependent.

Since, according to the misleading instructions, appellant was eligible to file as head of household for 1974, and because appellant relied upon these written instructions, which were sent with 1974 returns to **taxpayers** advising them concerning tax liability and reporting requirements, appellant urges that he should not be

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required to pay the additional tax now sought. Thus, appellant actually contends that respondent should be estopped from collecting the additional tax. Respondent concedes that the instructions were misleading but contends that the statutory law must nevertheless be controlling. It also urges, in the alternative, that even though respondent's instructions were faulty, no estoppel will lie because of the absence of any detrimental reliance.

As contended by respondent, even if a taxpayer is misled by the action of the government, this factor alone is not sufficient to warrant application of the doctrine of estoppel. Detrimental reliance must also be established. (Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct. 7, 1974; Appeal of Harlan R. and Esther A. Kessel, Cal. St. Bd. of Equal., March 27, 1973.) Appellant obviously could not have relied to his detriment on respondent's inaccurate instructions in selecting his living arrangement during 1974, since the instruction pamphlet was not issued until early in 1975. Therefore, with respect to his tax liability, there is an absence of detrimental reliance, and, consequently, the estoppel doctrine is clearly inapplicable.

Appellant also urges that because of respondent's misleading instructions, he should not be liable for interest charges. Section 18688 of the Revenue and Taxation Code provides for interest upon the amount assessed as a deficiency from the date prescribed for the payment of the tax until the date paid. Appellant maintains that tax at the higher rate, applicable for those single persons not eligible for status as head of household, was not paid when due solely in reliance upon respondent's misleading publication. Therefore, he asserts that the interest is being imposed solely as a consequence of respondent's misleading representation. Consequently, he contends that respondent should be estopped from collecting interest.

Estoppel is an equitable principal which will be invoked against the government where the case is clear and the injustice great. However, it is indicated in several federal income tax cases that taxpayers should not regard such informal publications as the instruction pamphlet as sources of authoritative law which give rise to the doctrine of estoppel where misleading statements are made therein. (See Eugene A. Carter, 51 T.C. 932 (1969); Thomas J. Green, Jr., 59 T.C. 456 (1972); see also Lewis F. Ford, 1174, 101 P-H Memo. T.C. (1974).) Moreover, the federal courts have consistently held that interest charges such as those imposed here constitute compensation for the use of money, rather than a penalty.

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(Ross v. United States, 148 F. Supp. 330 (D. Mass. 1957);
Priess v. United States, 42 F. Supp. 89 (E.D. Washington,
N.D. 1941).)

For these combined reasons, we conclude that the doctrine of equitable estoppel should not be applied in the present appeal to preclude respondent **from** collecting the interest mandated by section 18688.

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Keith C. O'Connor against a proposed assessment of additional personal income tax in the amount of \$175.11, plus interest, for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of February 1979, by the State Board of Equalization.

William A. Burnett, Chairman
Michael Olson, Member
John C. King, Member
_____, Member
_____, Member