

Appeal of Ronald J. and Luella R. Goodnight

In 1975 appellants moved from California to Ohio. On their nonresident California personal income tax return for that **year**, they deducted **\$14,922.99** in moving expenses, consisting of the following items:

Transportation of household and personal property	\$ 4,384.56
Travel,, meals, and lodging during the move	1,054.39
Temporary living expenses	690.88
Qualified residence sale, purchase, or lease expense	5,029.75
Excess of expenses over 30 days'	1,713.57
Federal taxes	2,049.84
	<u>\$14,922.99</u>

Mr. Goodnight's employer either paid third parties directly or reimbursed appellants for all of these expenses.

Upon auditing appellants' return, respondent disallowed the amounts for "federal taxes" and "excess, of expenses over 30 days," and also limited the amounts claimed for "qualified residence sale" and "temporary living expenses" to a combined total of **\$2,500.00**. Thus, respondent disallowed a total of **\$6,984.04** (**\$2,049.84 + \$1,713.57 + (\$5,029.75 + \$690.88 - \$2,500.00) = \$6,984.04**) of the claimed deduction, and proposed an assessment of additional tax accordingly. On appeal, appellants dispute only the **\$2,500.00** limitation on their "qualified residence sale" and "temporary living expenses," contending that neither the tax return form nor its accompanying instructions mentioned a **\$2,500.00** limit. The question we must decide, therefore, is whether respondent properly applied that limitation.

The deduction of moving expenses paid or incurred by a taxpayer in connection with the commencement of work at a new principal place of work is governed by section 17266 of the Revenue and Taxation Code. In the case of a taxpayer who moves from California to another state, subdivision (d) of that section states that

the deduction allowed by this section shall be allowed only if any amount received as payment for or reimbursement of expenses of moving from one residence, to another residence is includable in gross income as provided by Section 17122.5 and the amount of deduction shall be limited only to the amount of such payment or reimbursement or the amounts specified in subdivision (b), whichever amount is the lesser. (Emphasis added.)

Appeal of Ronald J. and Luella R. Goodnight

As it read during the year in question, subdivision (b) provided, in pertinent part, as follows:

* * *

(3) (A) The aggregate amount allowable as a deduction. . .which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1) shall not exceed one thousand dollars (\$1,000). The aggregate amount allowable as a deduction. . .which is attributable to qualified residence sale, purchase, or lease expenses shall not exceed two thousand five hundred dollars (**\$2,500**), reduced **by the** aggregate amount so allowable which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1).

By virtue of paragraph (3), subparagraph (A) above, the categories of moving expenses described in subparagraphs (C), (D), and (E) of paragraph (1) of subdivision (b) are subject to an aggregate limitation of \$2,500. Appellants attempted to deduct a total of **\$5,720.63** of such expenses (\$690.88 of temporary living expenses plus **\$5,029.75** of qualified residence sale, purchase, or lease expenses), but respondent disallowed the **\$3,220.63** excess over \$2,500. This action was clearly required by the statute.'

Appeal of Ronald J. and Luella R. Goodnight

e 7

Appellants argue, however, that the \$2,500 limitation should not be applied since it was not mentioned on the nonresident income tax return form or in the form's accompanying instructions. This same argument, which is an attempt to raise an estoppel against respondent, was made and rejected under virtually identical circumstances in Appeal of Henry L. and Joyce Stein, decided by this board on December 5, 1978. As we said in that case, an essential element of estoppel is detrimental reliance by the taxpayer, and such reliance is not present in the case of erroneous or incomplete income tax instructions since the facts giving rise to appellants' tax liability occurred well before the instructions were followed. (See also Appeal of Arden K. and Dorothy S. Smith, Cal. St. Bd. of Equal., Oct. 7, 1974; Appeal of Willard S. Schwabe, Feb. 19, 1974.) Accordingly, estoppel may not be invoked to relieve appellants of their liability for the deficiency assessment in question.

Appellants also contend that their reliance on respondent's misleading instructions should excuse them from paying any interest on the deficiency. We have consistently held, however, that interest on a deficiency is mandatory under Revenue and Taxation Code section 18688, and may not be waived. (See Appeal of Henry L. and Joyce Stein, supra; Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977.) Interest is not a penalty imposed on the taxpayer for wrong-doing, but is merely compensation for the use of money. Thus, appellants' 'good faith reliance on respondent's instructions **is not** a defense against the assessment and collection of statutory interest.

For the reasons expressed above, respondent's action in this matter will 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,

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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 protest of Ronald J. and Luella R. Goodnight against a proposed assessment of additional personal income **tax in** the amount of \$386.31 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 28th day of
June , 1979, by the State Board of Equalization.

William A. Burnett, Chairman
Michael P. ..., Member
..., Member
, Member
, Member