



Appeal of Robert A. and Dorothy L. Craft

Appellants filed a joint California personal income tax return for the taxable year 1974. Upon review of that return, respondent made an upward adjustment in appellants' reported taxable income for 1974 and, on September 15, 1978, issued a notice of proposed assessment of the resulting additional tax. On December 29, 1978, appellants sent a check to respondent in the full amount of the assessment, including interest to the date of payment. In a letter accompanying their remittance, appellants advised respondent that they agreed with the additional tax, but not with the amount of interest imposed.

Respondent treated appellants' correspondence of December 29, 1978, as a claim for refund of a portion of the interest which they had paid. In due course that claim was denied, and this timely appeal followed. The only issue presented here is whether respondent properly computed the amount of interest due on the deficiency.

Appellants contend that respondent was dilatory in issuing the notice of proposed assessment of additional tax for 1974. They suggest that the delay was prompted by respondent's desire to obtain the greatest amount of interest at the rate of 12 percent. Appellants state that at all times between 1974 and September 15, 1978, the date of the notice of proposed assessment, they had sufficient money in their savings account to pay the tax deficiency, had they known about it. They urge that as their savings were earning interest at the rate of only 5-1/4 percent during that period, respondent should be compelled to recompute interest on the deficiency assessment at the rate of 5-1/4 percent and refund the difference to them.

In prior opinions we have consistently rejected arguments similar to appellants' as being without merit. (Appeal of Ralph D. and Lena C. Vaughn, Cal. St. Bd. of Equal., Oct. 17, 1973; see also Appeal of Judith Ann Russell, Cal. St. Bd. of Equal., April 10, 1979; Appeal of Allan W. Shapiro, Cal. St. Bd. of Equal., Aug. 1, 1974.) Under the provisions of sections 18586 and 18588 of the Revenue and Taxation Code, respondent is authorized to issue a notice of proposed assessment of additional tax for a given year at any time within four years after the last day prescribed by law for the filing of a personal income tax return for that year. The normal four-year limitation period for assessing a deficiency for taxable year 1974 expired on April 15, 1979. Respondent's notice of the proposed assessment against appellants for 1974 was

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issued on September 15, 1978, well within the allowable statutory period.

With respect to the amount of interest imposed on that timely deficiency assessment, section 18688 of the Revenue and Taxation Code provides as follows:

Interest upon the amount assessed as a deficiency shall be assessed, collected and paid in the same manner as the tax at the rate of 6 percent per year from the date prescribed for the payment of the tax until the date the tax is paid. If any portion of the deficiency is paid prior to the date it is assessed, interest shall accrue on such portion only to the date paid. However, the rate shall be 12 percent per year instead of 6 percent per year with respect to interest payable on unpaid amounts which are delinquent more than one year.

Respondent's computation of interest in the instant case was made in accordance with the provisions of the above section. The language of that section is clear and mandatory, leaving this board no discretion to make any adjustment in the amount of statutory interest which accrued on the tax deficiency from the date it was due until the date it was paid by appellants. (See Appeal of Amy M. Yamachi, Cal. St. Bd. of Equal., June 28, 1977; Appeal of Allan W. Shapiro, supra.)

Based upon the foregoing, we conclude that respondent properly refused to refund any portion of the interest paid by appellants on the deficiency in question.

