

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 131

June 20, 1958

JOINT RETURNS UNDER SECTION 18470

Syllabus:

Section 18470 of the Personal Income Tax Law merely postpones the due date of the joint return. The remaining spouse must file a timely separate return during the other spouse's absence or be subject to penalties and interest as to his share of the tax.

A spouse's income tax return was due on April 15, but the due date of the other spouse's return was postponed by operation of section 18470 until December (90 days after return to the Americas). Neither filed a separate return for the year, but filed a delinquent joint return in March of the following year. Advice is requested as to the proper penalty and interest assessment.

The right of married persons to file jointly is not abrogated by the fact that one spouse is absent from the Americas, and the due date for such joint return is postponed by section 18470 to a date 90 days after the return of the absent spouse. However, the remaining spouse's separate liability is not postponed by this section. If the parties contemplate filing jointly upon the return of the absent spouse, the remaining spouse must file a timely return during his spouse's absence in order to protect himself against penalties and interest. Under section 18410, separate returns may later be modified by filing a joint return. Since a timely separate return was not filed, the remaining spouse incurred the full penalty as to his share of the tax. The wife's tax liability was postponed until December and only a 15% penalty is attributable to her share of the tax. Each spouse's share is computed as 1/2 the total tax due on the assumption that the income reported in the joint return is community property. Where the joint return includes income which is the separate property of one spouse, the penalty is computed on an allocation based on separate tax liabilities of the parties had they elected to file separate returns. Interest on the delinquency is computed from the due date of the tax. Therefore, interest upon the remaining spouse's share is computed from April 15 and the returning spouse from the date the return was due, in this case December 26.