

# LAW SUMMARY

## EQUITABLE ESTOPPEL

The Franchise Tax Board (FTB) and taxpayers are required to determine tax liability based upon applicable law.

The doctrine of equitable estoppel provides that in certain cases, the FTB may be “estopped” from asserting a tax liability against taxpayers, based upon actions taken by the FTB which lead to reliance by the taxpayers to their harm or “detriment.”

However, the law provides that the doctrine of equitable estoppel will be applied against a governmental agency, such as the FTB, **only** when all of the elements of estoppel are conclusively present, and when application of estoppel is necessary to prevent manifest injustice. (*Heckler v. Community Health Services* (1984) 467 U.S. 51, 81 L.Ed.2d 42; *United States Fidelity and Guaranty Company v. State Board of Equalization* (1956) 47 Cal.2d 384, 303 P.2d 1034.)

### 1. Elements Of Equitable Estoppel

Four conditions must be satisfied before equitable estoppel can be asserted against the FTB:

- (1) The party to be estopped [the FTB] must be advised of the facts;
- (2) That party [the FTB] must intend that its conduct be acted upon by the taxpayer, or it [the FTB] must act in such a way that the party claiming estoppel [the taxpayer] had a right to believe it was so intended;
- (3) The party claiming estoppel [the taxpayer] must be ignorant of the true facts;

and

- (4) The party claiming estoppel [the taxpayer] must show detrimental reliance. (*Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725; *Appeal of Priscilla L. Campbell*, 79-SBE-035, February 8, 1979; *Appeal of Arden K. and Dorothy S. Smith*, 74-SBE-045, October 7, 1974.)

### 2. Burden Of Proof

The taxpayer, as the party claiming that estoppel applies, has the burden of proving that all of the elements of estoppel are present. (*Appeal of Western Colorprints*, 78-SBE-071, August 15, 1978; *Appeal of U.S. Blockboard Corporation*, 67-SBE-038, July 7, 1967.)

### 3. Detrimental Reliance

Detrimental reliance is only present where the FTB's action results in an increased tax liability on the part of the taxpayer. (*Appeal of Robert C. and Betty L. Lopert*, 82-SBE-011, January 5, 1982.) If the taxpayer would have had the same tax liability regardless of the alleged action of the FTB, then the doctrine of equitable estoppel does not apply.

The doctrine of equitable estoppel is not available for the protection of those who have suffered loss because of their own failure to act. (*Appeal of Baldar Industries*, 87-SBE-011, March 3, 1987; *Hampton v. Paramount Pictures Corp.* (9th Cir. 1960) 279 F.2d 100, 104.)

### 4. Alleged Reliance On Erroneous Tax Instructions Does Not Give Rise To Application Of The Doctrine Of Equitable Estoppel

The FTB, as an administrative agency, does not have the legal authority to interpret a statute in such a way as to change its meaning or effect.

When the FTB's tax instructions are alleged to be unclear or misleading, taxpayers must follow the law, and not the instructions. (*Appeal of Melvin D. Collamore*, 72-SBE-031, October 24, 1972; *Appeal of Robert P. and Carolyn R. Schalk*, 76-SBE-072, June 22, 1976; *Transamerica Occidental Life Ins. Co. v. State Bd. of Equal.* (1991) 232 Cal.App.3d 1048, 1055.)

Taxpayers should not regard tax instruction pamphlets as sources of authoritative law giving rise to the doctrine of equitable estoppel. (*Appeal of Priscilla L. Campbell*, 79-SBE-035, February 8, 1979.)

Where the facts "fatal" to the taxpayer's claim occurred before the taxpayer read the FTB's instructions, the law states that the taxpayer cannot have detrimentally relied on the instructions. Estoppel does not apply. (*Appeal of Amy M. Yamachi*, 77-SBE-095, June 28, 1977; *Appeal of Herschel and Josephine M. Norton*, 83-SBE-036, Feb. 1, 1983.)

**5. Alleged Reliance On Oral Statements Of FTB Employees Does Not Give Rise To Application Of The Doctrine Of Equitable Estoppel**

Tax liability must be based upon the law as set forth in the Revenue and Taxation Code, and not upon oral statements of FTB employees. (*Appeal of Raymond E. and Joy Lecompte*, 89-SBE-025, September 26, 1989.)

Reliance on informal opinions offered by an FTB employee is not sufficient to create estoppel against the FTB. (*Appeal of Virgil E. and Izora Gamble*, 76-SBE-053, May 4, 1976; *Appeal of Mary M. Goforth*, 80-SBE-158, December 9, 1980.)

**6. Failure Of The FTB To Assess Tax In Previous Year Does Not Constitute Equitable Estoppel**

The fact that the FTB may not have assessed additional tax for a previous taxable year, where the taxpayer took the same position, does not constitute equitable estoppel. No express or implied determinations are made by the FTB's failure to assess additional tax for an earlier return. (*Appeal of Duane H. Laude*, 76-SBE-096, October 6, 1976.) Each taxable year stands on its own, and must be examined as a separate taxable entity. (*Burnet v. Sanford & Brooks Co.* (1931) 282 U.S. 359, 365-366; *Commissioner of Internal Revenue v. Sunnen* (1948) 333 U.S. 591, 598.)