67-SBE-039

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ESTATE OF JAMES A. CRAIG, DECEASED,)
AND VIOLA F. CRAIG)

Appearances:

For Appellants: Murray D. Heller
Certified Public Accountant

For Respondent: Joseph W. Kegler
Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Estate of James A. Craig, Deceased, and Viola F. Craig for refund of personal income tax in the amounts of $218.80, $332.43, $182.08, $279.81, $496.26, $519.59, $103.62, $446.78, $545.85, $576.66, $550.31, and $771.12 for the years 1950 through 1961, respectively.

The sole issue raised by this appeal is whether appellants' claims for refund were barred by the statute of limitations.

Appellant Viola F. Craig and her husband, James A. Craig, now deceased, filed joint personal income tax returns for each of the years 1950 through 1962. In November 1964, following an audit by the Internal Revenue Service, appellants received notice of increases in their federal income tax liability for each of the years 1950 through 1962, inclusive. Those adjustments were not considered barred by the federal statute of limitations (Int. Rev. Code of 1954, § 6501(a)) because it was asserted that fraud was involved (Int. Rev. Code of 1954, § 6501(c)).

Within the 90-day period prescribed by section 18451 of the Revenue and Taxation Code, appellants notified respondent of the changes which had been made in their federal tax liability. Respondent thereupon issued notices of proposed additional assessment for the years 1950 through 1962, based solely upon the federal action. Appellants paid those state assessments on January 27, 1965.

In April 1965 upon discovery of additional evidence, appellants filed claims for refund with the Internal Revenue Service for the years 1950 through 1962, inclusive. Appellants did not notify respondent that they had filed those federal claims. In mid-December of 1965 appellants received notice that the Internal Revenue Service was allowing portions of their refund claims. At that time appellants had already agreed to certain adjustments in the amounts claimed, but they did not receive certified notices of the adjusted allowances until March 25, 1966.

Thereafter appellants filed claims for refund with respondent for each of the years 1950 through 1962, based upon the same grounds as the federal claims. The state claims were received by respondent on May 2, 1966. Respondent allowed only the refund claim for 1962 on the ground that it was the only one which had been timely filed. That determination gave rise to this appeal.

The governing portion of section 19053 of the Revenue and Taxation Code provides:

> No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer, ...

Respondent contends that the above quoted language of section 19053 is mandatory and that under the terms of that section only appellants' claim for 1962 was timely filed since: (1) by the date of filing, May 2, 1966, four years had elapsed from the due dates of the returns for the years 1950 through 1961, and (2) all of the refund claims were filed with respondent on May 2, 1966, more than one year from January 27, 1965, the date of overpayment.

Appellants concede that they filed their claims for refund more than one year from the date of overpayment. They contend, however, that the one-year statute of limitations should be waived in this case since the delay in their filing claims for refund was due to their desire to obtain final determinations from the Internal Revenue Service on their federal claims for submission to respondent. Appellants also place emphasis on the fact that because fraud was asserted the statutes of limitation for proposed additional assessments were considered inapplicable. It is argued that there should be a similar waiver of the limitation on the time for filing claims for refund.

In several prior appeals we have had occasion to consider the construction to be given statutes of limitation on the period for filing refund claims. (Appeal of Cleo V. Mott, Cal. St. Bd. of Equal., Aug. 7, 1963; Appeal of Clarence L. and Lois Morey, Cal. St. Bd. of Equal., Aug. 3, 1965; Appeal of Daniel Gallagher Teaming, Mercantile and Realty Co., Cal. St. Bd. of Equal., June 18, 1963.) In conformity with the federal law we have held that those statutes must be strictly construed and that a taxpayer's failure, for whatever reason, to file a claim within the statutory filing period bars him from doing so at a later date. We see no reason to reach a different conclusion in the instant case. Appellants could have filed state refund claims at the same time they filed their federal claims. Appellants also had sufficient time in which to file their refund claims between their receipt of the Internal Revenue Service's acknowledgment of its overassessments and January 27, 1966, the end of one year from the date of overpayment, and they failed to do so.

The fact that assessments were issued against appellants after the normal period of limitation had expired, because fraud was asserted, does not call for an extension of the time for claiming refunds. Under both state and federal law the limitation on the period for proposing additional assessments is not applicable in the case of a false or fraudulent return. (Rev. & Tax. Code, § 18586; Int. Rev. Code of 1954, § 6501(c).) There is no provision in either the state or federal law, however, which extends the time available to the taxpayer for the filing of a claim for refund merely because the taxing authority has alleged fraud. The federal claims for refund were allowed because they had been filed within the statutory period prescribed in section 6511 of the Internal Revenue Code of 1954.

For the above reasons we have no alternative but to follow the mandate of section 19053 of the Revenue and Taxation Code and to sustain respondent's action in this matter.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Estate of James A. Craig, Deceased, and Viola F. Craig for refund of personal income tax in the amounts of $218.80, $332.43, $182.08, $279.81, $496.26, $519.59, $103.62, $446.78, $545.85, $576.66, $550.31, and $771.12 for the years 1950 through 1961, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of July, 1967, by the State Board of Equalization.

Paul R Leake, Chairman

Robert W Lynch, Member

Richard Nevins, Member

_____, Member

_____, Member

ATTEST: _____, Secretary