



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
MAURICE AND CAROL B. HYMAN }

For Appellants: Bernard Seinfeld
Certified Public Accountant

For Respondent: Crawford H. Thomas
Chief Counsel

James W. Hamilton
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 claim of Maurice and Carol B. Hyman for refund of personal income tax in the amount of \$1,360.80 for the year 1959.

The only issue raised is whether appellants' claim for refund is barred by the statute of limitations.

In 1963 the Internal Revenue Service audited appellants' 1959 federal income tax return and found that a reported capital gains transaction was in fact an ordinary Income transaction and assessed an additional \$17,851.32 in federal income tax for that year. The amount was paid to the federal government under protest. As a result of the federal adjustment, respondent thereafter issued a notice of proposed deficiency assessment to appellants in the amount of \$1,814.40 plus \$673.68 in interest. Appellants did not file a protest with respondent and paid the additional assessment on July 17, 1966. When respondent's proposed deficiency assessment was issued appellants were still litigating the

Appeal of Maurice and Carol B. Hyman

federal assessment question, The federal dispute was ultimately resolved in November 1967, with the federal assessment being reduced. In January 1968 appellants filed a claim for refund with respondent, basing the claim on the reduction of the federal assessment.

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 its clear terms the latest date for filing the refund claim was July 17, 1967. Appellants maintain that the filing of a refund claim with respondent should not have been required until after the federal matter was resolved because the original federal **determination was the basis of respondent's assessment.**

In several prior appeals we have considered the construction to be given statutes of limitation on the period for filing refund claims where the overpayment was related to the appellant's resolution of a tax matter with the federal government. (Appeal of Estate of James A. Craig, Deceased and Viola F. Craig, Cal. St. Bd. of Equal., July 7, 1967; Appeal of Cleo V. Mott, Cal. St. Bd. of Equal., Aug. 7, 1963; Appeal of Daniel Gallagher Teaming Mercantile & Realty Co., Cal. St. Bd. of Equal., June 18, 1963; Appeal of Clarence L. and Lois Morey, Cal. St. Bd. of Equal., Aug. 3, 1965.) In conformity with the interpretation given to comparable federal law we have consistently held that statutes of limitation must be strictly construed and that a taxpayer's failure to file a claim with respondent **within** the statutory filing period bars him from doing so at a later date. There is no reason to reach a different conclusion in the instant case. Appellants easily could have filed a protective refund claim within the statutory filing period.

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

Appeal of Maurice and Carol B. Hyman

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 claim of Maurice and Carol B. Hyman for refund of personal income tax in the amount of \$1,360.80 for the year 1959, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of February, 1969, by the State Board of Equalization.

John W. Lynch, Chairman
Paul R. Leide, Member
Richard D. ..., Member
_____, Member
_____, Member

Attest: W. H. Freeman, Secretary