76-SBE-034

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
PATRICIA M. BLITZER)

For Appellant: Patricia M. Blitzer, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

Kendall Kinyon
Counsel

OPINION

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 Patricia M. Blitzer for refund of personal income tax in the amount of $121.22 for the year 1968.

Appeal of Patricia M. Rlitzer

The sole issue for determination is whether appellant's claim for refund is barred by the statute of limitations.

Appellant did not file a timely California personal income tax return for 1968. Thereafter, respondent received notice from appellant's employer that she had been paid $6,125.00 in wages during 1968. Respondent requested that appellant file a return for that year. Appellant failed to file the requested return and on January 11, 1971, respondent issued a proposed assessment based upon the wage statement. The assessment was for a single person with gross income of $6,125.00. After allowing the $1,000.00 standard deduction the tax liability was $75.00. In addition to the assessment for taxes, respondent also assessed a 25 percent delinquency penalty for failure to file a return and an additional 25 percent penalty for failure to file a return after notice and demand. (See Rev. & Tax. Code, § 18681, 18682.)

On February 19, 197 1, appellant filed a return for 1968 reflecting a tax liability of $75.00 and the $37.50 in penalties. Appellant paid. $99.91 with the delinquent return, and on May 3, 1971, paid the remainder of the tax and penalties plus interest of $8.63.

On February 19, 1974, appellant filed an amended 1968 return claiming "head of household" status and requesting a refund of $121.22. Respondent denied the refund claim on the ground that it was barred by the statute of limitations because it had been filed more than four years after the due date of appellant's 1968 return, and more than one year after the date of appellant's last payment on her 1968 liability.

The law explicitly provides the time within which a claim for refund must be filed. Section 19053 of the Revenue and Taxation Code provides, in part:

> 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 .....

The time for filing appellant's 1968 return was April 15, 1969. Payments on her 1968 tax liability were made on, February 19, 1971, and May 3, 1971. Four years from the 1968 due date was April 15, 1973. One year from the date of the last payment was May 3, 1972. The last day on which appellant could have filed a

timely claim for refund for 1968 was April 15, 1973. Since appellant did not file her amended return and claim until February 19, 1974, she did not satisfy the specific time requirements of the starute.

Appellant does not argue that her claim was timely filed but urges that respondent is estppped from asserting the bar of the statute of limitations. Appellant alleges that during two separate telephone conversations she was advised by one of respondent's employees that the statute of limitations for filing a claim was four years from the date of payment. The employee was identified only as a female with a Spanish accent.

As a general rule estoppel will be invoked against the state only where grave injustice would otherwise result. (California Cigarette Concessions v. City of Los Angeles, 53 Cal. 2d 865, 869 [3 Cal. Rptr. 675, 350 P. 2d 715].) In an appropriate case a government agency may be estopped to rely on the statute of limitations in denying a claim where erroneous'advice given by the agency has induced the claimant to delay filing until after the limitations period has expired. (See Fredrichsen v. City of Lakewood, 6 Cal. 3d 353, 358 [99 Cal. Rptr. 13, 491 P. 2d 805]; Driscoll v. City of Los Angeles, 67 Cal. 2d 297, 306 [61 Cal. Rptr. 661, 431 P. 2d 245].) However, the burden of proving estoppel is on the party asserting it. (Girard v. Gill, 261 F. 2d 695.) We do not believe that appellant's vague allegation of erroneous advice by an unidentified employee of respondent is sufficient to satisfy that burden. Accordingly, we cannot conclude that the statute of limitations is barred by estoppel, and must sustain respondent's action in denying the claim for refund.

ORDER

Pursuant to the views expressed in the opinion of the hoard on file in this proceeding, and good cause appearing therefor,

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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 Patricia M. Blitzer for refund of personal income tax in the amount of $121.22 for the year 1968, be and the same is hereby -sustained.

Done at Sacramento, California, this 5th day of April, 1976, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____ Member

_____, Member.

ATTEST': _____, Executive Secretary