

Appeal of John W. Anderson

The question presented by this appeal is whether respondent properly denied appellant's claim for refund of personal income tax for the year 1950.

Appellant and his wife filed separate California personal income tax returns for the year in issue. Documentation provided by respondent reveals that appellant did not file his 1950 return until May 12, 1961 and that later that year respondent issued him a notice of proposed assessment of additional personal income tax.

Appellant failed to contest respondent's issuance of the notice of proposed assessment and it became final sometime later in 1961. When he failed to pay his tax liability, respondent commenced collection activities. These collection actions proved to be only marginally successful until 1979 when, pursuant to an order to withhold issued pursuant to section 18817 of the Revenue and Taxation Code, respondent collected appellant's unpaid tax liability from his bank account.

Appellant, relying upon Revenue and Taxation Code section 18586, contends that respondent's collection of his tax liability pursuant to section 18817 was improper in that: (i) he never received a notice of proposed assessment with regard to the year 1950; and (ii) respondent has failed to demonstrate that it ever issued him such a notice. Upon review of the record of this appeal, we are convinced that appellant's arguments are without merit.

The basic statute of limitations for deficiency assessments is found in section 18586, which provides:

Except in case of a fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise fixed. (Emphasis added.)

Respondent's records clearly reveal that appellant filed his California personal income tax return for the year in issue on May 12, 1961 and that later that year he was

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mailed the subject notice of proposed assessment. Respondent's issuance of the notice in 1961 was well within the four-year statute of limitations for deficiency assessments set forth in section 18586. Finally, appellant's contention that he never received that notice is irrelevant; all that is required by statute is that the notice be mailed by respondent within the prescribed time. (Rev. & Tax. Code, § 18586; see also Mudd v. McColgan, 30 C.2d 463 [183 P.2d 10] (1947).) Respondent's 1961 issuance of the notice of proposed assessment satisfied that statutory requirement.

For the above reasons, respondent's action in this matter will be sustained.

