

Appeal of Paul R. Brown

The question presented, is whether respondent *properly* disallowed appellant's claim for refund because it was not timely filed.

On April 17, 1978, appellant requested an extension of time to file his 1977 California personal income tax return because two of his former employers had not provided him with W-2 forms-for his 1977 wages. Respondent subsequently granted him an extension to October 15, 1978. On January 7, 1983, respondent finally received appellant's signed, but undated, 1977 return, on which appellant claimed a refund of \$212.05. Respondent notified appellant on March 17, 1983, that his refund claim was disallowed because it had not been filed within the time allowed by law. That denial gave rise to this appeal.

Revenue and Taxation Code section 19053 provides, in pertinent part, as follows:

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, and appellant does not deny, that the last day for filing a timely claim under this section was October 15, 1982, which is four years from the extended due date of appellant's 1977 return. Appellant contends, however, that it is unjust to penalize him for his employers' complete failure to provide him with appropriate W-2 forms.

In numerous prior appeals, we have had occasion to deal with the issue presented by this appeal. (See, e.g., Appeal of Manuel and Ofelia C. Cervantes, Cal. St. Bd. of Equal., Aug. 1, 1974; Appeal of of James A. Craig, Deceased, and Viola F. Craig, Cal. St. Bd. of Equal., July 7, 1967.) In conformity with the interpretation given to comparable federal law, we have consistently held that the statute of limitations set forth in section 19,053 must be strictly construed and 'that a taxpayer's failure, for whatever reason, to file a claim for refund within the statutory period bars him from doing so at a later date. There is no basis for a different result in this case.

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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 claim of Paul R. Brown for refund of personal income tax in the **amount** of \$212.05 for the year 1977, be and the same is hereby sustained.

Done at Sacramento,, California, this **31st** day of January , '1984, by the State Board of Equalization, with Board **Members** Mr. Nevins, **Mr.** Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

Richard Nevins _____, Chairman
Ernest J. Dronenburg, Jr. _____, Member
Conway H. Collis _____, Member
William M. Bennett _____, Member
Walter Harvey* _____, Member

*For Kenneth Cory, per Government Code section 7.9