

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EARL AND MARION MATTHXESSEN)

For Appellants: John L. **Grandsaert**
Attorney at Law

For Respondent: Israel Rogers
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), ¹⁷ of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Earl and Marion Matthiessen for refund of personal income tax in the amounts of \$216, \$1,576, and \$1,140 for the **years** 1974, 1975, and 1976, respectively.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the years in issue..

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The issues presented for our decision are whether appellants' claims for refund are barred by an applicable statute of **limitations, and**, if so, whether appellants are entitled to offset the barred overpayments against a tax deficiency.

In February 1978, respondent issued appellants a notice of a proposed deficiency assessment **for the year 1972** based upon the **determination** of the Internal Revenue Service that they had received ordinary income from the transfer of stock. Appellants protested the proposed **assessment and** concurrently **sought** appellate review of the federal determination, **On January 8, 1981**, pursuant to an agreement negotiated **between** appellants and the Internal Revenue **Service**, a decision **was** entered in the United States Tax Court **which** decreed that appellants owed **additional federal income tax for 1972** in the amount of \$85,455. On March 26, 1981, appellants notified the Franchise Tax Board of the change in their 1972 federal tax liability resulting from **the** settlement of **the** federal tax appeal.

Upon examination of the **information** supplied by appellants, respondent determined that a revision of its original proposed assessment was in order. In April 1981, respondent issued a notice of action which reflected the federal adjustment. The amount of the revised proposed assessment for 1972 was changed to **\$17,970.60, not** including **interest**. The notice also served to inform appellants that their protest against the original **pro-**posed assessment was denied, Appellants appealed **respon-**dent's action on their protest.. **On** February 3, 1982, that appeal was dismissed **when** appellants stipulated to the assessment of the revised tax deficiency for 1972 in the amount determined by respondent,

Two **months** later, on April **9, 1982**, appellants filed amended returns for the years 1974, 1975, and 1976, claiming the tax refunds at **issue** in the present appeal. On each amended return, appellants decreased the total income reported for the year and explained that the **amendment was "a** result of [the] 1972 **federal** tax audit." (App. Br., Ex. **B.**) Subsequently, in **June** and July of **1982**, appellants paid the full amount of the tax as well as accrued interest due **under** the **revised** 1972 proposed assessment which appellants had conceded **four** months earlier.

In March 1983, **respondent** denied appellants' claims **for** refund on the **basis** that **the** claims had not

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been filed within the period prescribed by section 19053 and, consequently, they were barred by the statute of limitations. Appellants then filed this appeal. Subsequently, appellants presented the Franchise Tax Board with copies of agreements with the Internal Revenue Service extending the period for assessing a deficiency in federal income tax for the year 1974. Respondent has determined **under section** 19053.3 that those extension agreements similarly extended the period for filing a claim for refund of California income tax paid for 1974. As a result, respondent now concedes that appellants' refund claim for 1974 was timely filed and states that it will allow the claim for that **year**. Thus, what must first be decided in this appeal is whether respondent properly disallowed appellants' claims for refund for the remaining years 1975 and 1976.

The general statute of limitations for filing refund claims is found in section 19053, which provides in pertinent 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 overpayment, whichever period expires the later, unless before the expiration of the period a claim **therefor** is filed by the taxpayer, ...

In numerous prior appeals, this board has held that the statute of limitations set forth in section 19053 must be strictly construed and that a taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars him from doing so at a later date. (See, e.g., Appeal of Robert J. and Rosemarie R. Gentry, Cal. St. Bd. of Equal., Appeal of Stanley R. and Cheryl J. Huddleston, Cal. St. Bd. of Equal., Aug. 17, 1982; Appeal of Wendell Jenkins, Sr., Cal. St. Bd. of Equal., June 23, 1981.) In the instant appeal, the **four-** year statutory period for filing the 1975 and 1976 refund claims expired on April 15, 1980, and April 15, 1981, respectively. Since the claims were not filed until April 9, 1982, it is clear that they were not timely under section 19053.

Appellants have challenged respondent's action on two alternative theories. Our resolution of these arguments requires us to consider the statutes of limitations provided by two other sections dealing with claims for tax refunds. First, appellants assert that the

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adjustments made by respondent in their 1972 tax liability required that income initially reported in 1974, 1975, and 1976 be transferred or attributed to the year 1972. The concomitant reduction of income resulted in overpayments of taxes for those three years. Thus, appellants argue that, because their claims for refund arose from changes caused by the proposed assessment for 1972 and their liability for that assessment was not settled until February 1982 when they **signed** the stipulation, their refund claims were timely filed in April 1982, .

-Appellants have not cited **any** legal authority 'for their apparent proposition that the statute of limitations for filing the 1975 and **1976** refund claims was tolled by their filing an appeal on the proposed assessment for 1972. In any case, this inventive argument overlooks the fact that respondent's 1572 assessment was based on a federal audit report which was subsequently revised by the decision in the federal tax court. Under certain circumstances, the statute of limitations for filing claims for California tax refunds is extended where the overpayment results from a federal tax **adjustment**, notwithstanding limitations otherwise imposed by section 19053. (Appeal of Goldie Kahn, Cal. St. Bd. of Equal., Apr. 6, 1978.)

Section 19053.6 provides:

If a taxpayer is required to--report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority **or** to file an amended return as required by Section 18451 and does report such change or files such return, a claim for credit or refund resulting **from** such adjustment may be filed by the taxpayer within six months from the date when **such** notice or amended return is filed with the Franchise Tax Board by the taxpayer, **or** within the period provided in [Section 19053) . . . , whichever period expires later.

Insofar as relevant to the instant appeal, section 18451 requires a taxpayer to notify respondent of **any** federal adjustment to his gross income "within 90 days after the final determination of such change or correction or **renegotiation, . . .**" (Rev. & Tax. Code, § 18451; Appeal of Stanley R. and Cheryl J. Huddleston, supra.) Respondent's regulations define "final determination" to be "an irrevocable determination **or adjustment of** a taxpayer's

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federal tax liability from which there exists no further right of appeal either administrative or judicial." (Cal. Admin. Code, tit. 18, reg. 18586.3, subd. (e).) Thus, if a taxpayer complies with section 18451 by reporting a federal change to the Franchise Tax Board within 90 days of the final determination of that change by the federal government, the taxpayer has six months under section 19053.6 to file a claim for refund. (Appeal of William and Betty Hillyer, Cal. St. Bd. of Equal., June 22, 1976.)

The record in the present appeal discloses that appellants settled their appeal of the Internal Revenue Service change in their 1972 federal taxes on January 8, 1981, when the United States Tax Court entered a stipulated decision. By a letter dated March 26, 1981, appellants duly ~~notified~~ the Franchise ~~Tax Board~~ of this "final federal determination" of their federal tax liability for 1972 within the prescribed 90-day period. (App. Br., Ex. C.) Under section 19053.6, appellants were thus entitled to file claims for refund of any tax overpayments resulting from the federal adjustment any time within the succeeding six-month period ending September 26, 1981. Unfortunately, the claims at issue in this appeal **were** not filed until April 9, 1982, almost seven months after the expiration of the extended deadline. Thus, the refund claims were not timely filed under the alternative statute of limitations set forth in section 19053.6.

Second, appellants contend that, even if the refund claims are barred by the general statute of limitations, the overpayment of taxes for 1975 and 1976 should **be** allowed as offsets to help cover the attendant tax deficiency for 1972. Appellants argue that the offsets should have been effected when they filed their refund claims. In support of their position, appellants add that the Internal Revenue Service credited their overpayments of federal income tax to the corresponding federal tax deficiency on the basis of **amended** federal returns.

California law does permit certain tax overpayments to be offset against a tax deficiency where a refund is not allowed due to the lapse of the four-year statute of limitations under section 19053. (Appeal of Frank and Joan Miller, Cal. St. Bd. of Equal., Aug. 1, 1984; Appeal of Wilfred and Gertrude Winkenbach, et al., Cal. St. Bd. of Equal., Dec. 16, 1975.) Section 19053.9 provides that an overpayment due a taxpayer which results

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from the transfer of income from one year to another may be offset in computing the tax deficiency for another year which similarly results from the transfer of such income. Offsets of these barred overpayments are not allowed after the expiration of seven years, from the due date of the return on which the overpayment is determined.

-Here, it is undisputed that appellants' refund claims were filed within the seven-year period prescribed by section 19053.9. **Consequently**, the barred overpayments from the years 1975 and 1976 could have been offset until April 15, 1983, and April 15, 1984, respectively. Nevertheless; we must find that appellants' failed to assert their right to offset in a timely **manner**.

Section 19053.9 requires that barred overpayments be offset **against** any tax deficiency. While the overpayments in 1975 and 1976 resulted from the same transfer of income that produced the deficiency in 1972, appellants eliminated the deficiency against which the overpayments could have been credited when they paid the full amount of the proposed assessment of additional tax for 1972 plus interest. Moreover, the fact that appellants paid the deficiency two or three months after filing their amended returns indicates to us that they were not aware of their right to offset at that time. Appellants appear to have assumed that the refund claims were timely filed. The first time that appellants suggested offsets as an alternative to refunds was on appeal after respondent denied their refund claims due to expiration of the statute of limitations, (**App. Supp. Ltr.**, Dec. 27, 1983.) Thus, by the time appellants **raised** their demand for offset during this proceeding, it was, unfortunately, a moot issue since the payment of the deficiency effectively precluded the application of any offsets.

In prior appeals, we have held that the Franchise Tax Board is not obligated to inform a taxpayer of the **time** within which a claim must be filed. (Appeal of F. D. Shagets, Cal. St. Bd. of Equal., July 26, 1982; Appeal of Cleo V. Mott, Cal. St. Bd. of Equal., Aug. 7, 1963.) Similarly, there is no authority for the proposition that respondent has a duty to discover that a taxpayer's overpayments are barred by the statute of limitations and to notify the taxpayer that the barred overpayments of income tax are eligible for offset. (See Appeal of Frank and Elsie M. Bartlett, supra; Appeal of Manuel and Ofelia C. Cervantes, Cal. St. Bd. of Equal., Aug. 1, 1974,) Based upon the foregoing, we have no choice but to find that

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respondent properly denied appellants' claims for refund and their subsequent demand for offset. **Accordingly,** respondent's action with respect to the years 1975 and 1976 must be sustained. 77

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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 claims of Earl and Marion Matthiessen for refund of personal income tax in the amounts of \$216, \$1,576, and \$1,140 for the years 1974, 1975, and 1976, respectively, be and the same is hereby modified in accordance with respondent's concession. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 30th day of July, 1985, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, Mr. Bennett, Mr. Nevins and Mr. Harvey present.

_____, Chairman
William M. Bennett, Member
Richard Nevins, Member
Walter Harvey*, Member
_____, Member

*For Kenneth Cory, per Government Code section 7.9