BEFORE TRE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of	)	
	)	No. 84R-91-VN
RICEARD R. AND	)	
BORTENSE M. SEDLACEK	)	

Appearances:

For Appellants: Virgil J. Butler

For Respondent: Anna Jovanovich
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), 1/ of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Richard R. and Hortense M. Sedlacek for refund of personal income tax in the amounts of $398.95, $892.97, $1,491.26, $1,711.54, $1,922.71, and $1,876.25 for the years 1972, 1973, 1974, 1975, 1976, and 1977, 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.

The sole issue presented by this appeal is whether appellants' claims for refund are barred by the statute of limitations.

In 1972, appellants purchased bonds issued by the Federal Home Loan Mortgage Corporation (FHLMC) and guaranteed by the Government National Mortgage Association (GNMA). In September 1972, appellants claim that they made an inquiry at the Long Beach District Office of the Franchise Tax Board regarding the taxability of the interest from the bonds. A representative allegedly advised appellants that the interest was subject to the California income tax. Five months later, in February 1973, appellants reportedly went to respondent's office in El Monte with a copy of a bond. They again asked whether the interest therefrom was taxable and were told that it was. In subsequent consultations with the Franchise Tax Board, appellants received the same information. Based on-these directions provided by respondent's employees, appellants claim that they included the interest derived from the bonds in their California taxable income for the next 10 years, 1972, through 1981.

In April 1983, appellants declare that they consulted Swink & Company, Inc., an investment banking firm in Malibu, and requested information about GNMA bonds, In response, the firm forwarded to appellants a copy of a Franchise Tax Board ruling dated March 26, 1980, and addressed to Swink & Company, Inc. This memorandum stated that interest from GNMA bonds was exempt from California taxation. With this new information, appellants filed amended returns for the years 1972-1981, inclusive, on May 19, 1983. The Franchise Tax Board treated the amended returns as claims for refund. Upon review, respondent allowed the refund claims for the four years from 1978 through 1981 but denied the claims for the earlier six years, 1972 through 1977, on the ground that these claims were barred by the statute of limitations. Appellants then filed this timely appeal.

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 the 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., Jan. 3, 1983; 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.) We have no choice but to reach the same conclusion in the present matter. Here, the four-year statutory period for filing refund claims for 1972, 1973, 1974, 1975, 1976, and 1977 expired on the 15th day of April in the years 1977, 1978, 1979, 1980, 1981, and 1982, respectively. Appellants' amended returns for these six years were filed on May 19, 1983, which is over one year after the statutory period had expired for the last year (1977) of the appeal period. Thus, it. is clear that the disputed claims for refund were not timely filed under section 19053.

In support of allowance of the refund claims, appellants contend that the Franchise Tax Board should be estopped from invoking the statute of limitations to bar their claims because its representatives misinformed them about the taxability of the interest from the GNMA bonds. In reliance on that misinformation, appellants state that they mistakenly paid taxes, which were not due, and did not file timely refund claims. We cannot agree with appellants' argument.

It is well established that the doctrine of estoppel will not be invoked against the state except in rare and unusual circumstances where grave injustice would otherwise result. (California Cigarette Concessions, Inc. v. City of Los Angeles, 53 Cal.2d 865, 869 [350 P.2d 715] (1960); United States Fid. & Guar. Co. v. State Board of Equal., 47 Cal.2d 384 [303 P.2d 1034] (1956); Appeal of James R. and Jane R. Miller, Cal. St. Bd. of Equal., July 31, 1973.) In an appropriate case, a government agency may be estopped to rely on the statute of limitations in denying a claim where the agency's erroneous advice 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 (1971).) However, informal opinions by Franchise Tax Board employees on questions of taxability

are insufficient to create estoppel against said taxing agency. (Appeal of Mary M. Goforth, Cal. St. Bd. of Equal., Dec. 9, 1980; see also Market Street Railway Co. v. State Board of Equalization, 137 Cal.App.2d 87 [290 P.2d 20] (1955); Appeals of Raymond D. and Adelaide L. Presley and Abraham J. and Luz S. Rodriquez, Cal. St. Bd. of Equal., Dec. 7, 1982; Appeal of Richard W. and Ellen Campbell, Cal. St. Bd. of Equal., Aug. 19, 1975.) In any case, the burden of proving estoppel is on the party asserting it. (Girard v. Gill, 261 F.2d 695 (4th Cir. 1958).) Here, appellants' assertion that representatives of the Franchise Tax Board provided erroneous advice in 1972 and 1973 is insufficient to justify application of the estoppel doctrine. Respondent did not advise appellants that a refund claim could be filed at any time or that there was no statute of limitations. (Appeal of Jerold E. Wheat, Cal. St. Bd. of Equal., June 21, 1983.) In short, appellants have not demonstrated that the advice persuaded them not to file the refund claims. If appellants harbored doubts about the taxability of the bond interest at the outset, there was nothing that prevented them from filing protective claims for refund in a timely manner.

Since we have found that the claims for refund were properly disallowed due to the expiration of the four-year statute of limitations under section 19053, there is no need to discuss the issue whether or not the interest from the GNMA bonds was taxable income.[2] Based on the foregoing, we must sustain respondent's action in this matter.

2/ In May 1984, respondent issued a legal ruling which declared that interest income from securities guaranteed by GNMA was taxable. The ruling acknowledged that this was a change in the position of the Franchise Tax Board, but added that interest income from securities issued by 'FHLMC had always been considered taxable.

Appeal of Richard R. and Hortense M. Sedlacek

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 HERESY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Hoard in denying the claims of Richard R. and Hortense M. Sedlacek for refund of personal income tax in the amounts of $398.95, $892.97, $1,491.26, $1,711.54, $1,922.71, and $1,876.25 for the years 1972, 1973, 1974, 1975, 1976, and 1977, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of March , 1986, by the State Board of Equalization, with Hoard Members Mr. Nevins, Mr. Collis, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins, Chairman

Conway H. Collis, Member

Ernest 3. Dronenburg, Jr., Member

Walter Harvey*, Member

, Member

*For Kenneth Cory, per Government Code section 7.9