

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
CHALLENGE BANNER CREDIT UNION )

For Appellant: H. V. Peterson  
Manager

For Respondent: Crawford H. Thomas  
Chief Counsel

Peter S. Pierson  
Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Challenge Banner Credit Union for refund of franchise tax in the amount of \$262.80 for the income year 1963.

Appellant Challenge Banner Credit Union is a financial corporation which operates on a cooperative basis. It filed its tax return for the year in question on February 20, 1964, and indicated that the company did not realize any taxable income in 1963. The return was accompanied by payment of the \$100 minimum tax. On March 10, 1964, appellant remitted an additional \$157.95, however this amount was not accompanied by a recomputation of the corporation's tax liability. Subsequently, the Franchise Tax Board determined that appellant's taxable income for the appeal year was \$2,006.02, and on October 31, 1966, that board issued a proposed assessment which indicated a total tax liability of \$190.57. However, this assessment reflected only appellant's payment of the \$100 minimum tax. Appellant paid the \$90057 difference, plus interest, on November 25, 1966.

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On October 31, 1968, appellant filed the claim for refund giving rise to this appeal. That claim was based on this board's holding in the Anneal of Mid-Cities Schools Credit Union, Cal. St. Bd. of Equal., decided December 15, 1966, relating to a financial corporation's right to an offset of amounts paid for personal property taxes, and on respondent's failure to consider the \$157.95 remittance. With respect to the first ground, appellant contended that the law as interpreted by the appeal cited above indicated that it was only liable for the \$100 minimum tax.

The Franchise Tax Board determined that the claim should be denied pursuant to the following portion of section 26073 of the Revenue and Taxation Code:

No such 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 such period a claim therefor is filed by the taxpayer,...

The last day prescribed for filing of the return in question was March 15, 1964.. (Rev. & Tax. Code, §25401.) Whether respondent's determination was correct is the sole issue of this appeal.

The Appeal of Robert A. and Nancy R. Jacobs, Cal. St. Bd. of Equal., decided August 3, 1965, involved a situation where the interpretation of law which had been applied by the Franchise Tax Board was subsequently changed by a decision of this board in another case. We held that such a change did not affect the period specified by the statute of limitations. Therefore, to the extent that appellant's claim was based on our holding in the Appeal of Mid-Cities Schools Credit Union, *supra*, respondent's denial must be upheld.

However, we do not think that section 26073 applied to the \$157.95 remittance. That amount was not transferred in satisfaction of a definite tax liability. Rather, it was a voluntary deposit of funds so that they would be available for application to a liability that might be defined in the future. To the extent that such a liability did subsequently arise, it was discharged by appellant's \$90.57 transfer. Therefore the \$157.95

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remittance never became an "overpayment" which started the running of the one-year limitation period of section 26073; accordingly, that statute does not bar a refund of this amount. (Rosenman v. United States, 323 U.S. 658 [89 L. Ed. 535]; United States v. Dubuque Packing Co., 233 F.2d453; Budd Co. v. United States, 252 F.2d456; see P. Lorillard Co. v. United States, 226 F. Supp. 694, aff'd per curiam, 338 F.2d499.)

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 KEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Challenge Banner Credit Union for refund of franchise tax in the amount of \$262.80 for the income year 1963 be and the same is hereby modified in that appellant is entitled to a refund of the \$157.95 remittance. In all other respects, the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 1st day of July, 1970, by the State Board of Equalization.

Leo R. Gentry, Chairman  
John W. Lynch, Member  
Tom R. Lewis, Member  
Richard C. Green, Member  
\_\_\_\_\_, Member

ATTEST: Richard C. Green, Secretary