

Appeal of Samuel L. Fox

Appellant is a disability retiree from federal government service. Early in 1974 he was informed by the U. S. Civil Service Commission that, as a result of several adverse court decisions, the Internal Revenue Service was reconsidering its position that disability pension payments qualified for the "sick pay" exclusion under section 105(d) of the Internal Revenue Code only until the recipient reached the earliest age at which he could have retired voluntarily without reduction in his benefits for early retirement. Thereafter, appellant filed protective claims for refund, which the Service granted after deciding to follow the federal courts in holding that disability payments qualify for the sick pay exclusion until the recipient reaches mandatory retirement age. Appellant also filed similar refund claims with respondent for the years 1968, 1969, 1971, 1972, and 1973. Respondent allowed the claims for 1971, 1972, and 1973, but denied those for 1968 and 1969 as untimely. Appellant has appealed only the denial of his 1968 claim.

Section 19053 of the Revenue and Taxation Code provides, in 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, ...**

Appellant does not contend that his 1968 refund claim was filed within the time prescribed by this section, but rather that the state should extend the time for claiming the refund because he was not aware until 1974 that he might be entitled to the sick pay exclusion for 1968.

In prior appeals where we have had occasion to consider the interpretation to be given statutes of limitation governing the filing of refund claims, we have held that those statutes must be strictly construed and that a taxpayer's failure, for whatever reason, to file a claim within the statutory filing period bars him from doing so at a later date. (See, e.g., Appeal of Estate of James A. Craig, Deceased, and Viola F. Craig, Cal. St. Bd. of Equal., July 7, 1967; Appeal of Philip B. and Rachael A. Prather, Cal. St. Bd. of Equal., June 3, 1975.) The same rule applies here, even though the

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limitations period had already expired before appellant became aware that respondent and the Internal Revenue Service had changed their position on the sick pay issue. The language of section 19053 is explicit and does not provide for any exceptions to its mandate. (Appeal of E. C. and P. M. Braeunig, Cal. St. Bd. of Equal., Feb. 18, 1970.)

ORDER

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 Samuel L. Fox for refund of personal income tax in the amount of \$1.00 or more for the year 1968, be and the same is hereby sustained.

Done at Sacramento, California, this 19 day of August 1975, by the **State Board of Equalization.**

John W. Lynch, Chairman
William B. Bennett, Member
George Feely, Member
Paul Stein, Member
_____, Member

ATTEST: W. W. Conlop, Executive Secretary