

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
WILLIAM AND BETTY HILLYER)

For Appellants: William Hillyer, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

James C. Stewart
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of William and Betty Hillyer for refund of personal income tax in the amount of \$291.00 for the year 1969.

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The issue presented is whether appellants' claim for refund was barred by the statute of limitations.

An audit of appellants' 1969 federal income tax return by the Internal Revenue Service revealed that appellants had inadvertently reported an interest expense as interest income. Appellants filed an amended federal return claiming a refund of the overpayment which was caused by that error. On October 19, 1974, they received a notice sent by the Internal Revenue Service on September 30, 1974, indicating that their claim for refund would be paid in full; however, the notice showed no computation of the interest payable on the refund. A check for full payment, including interest, arrived in the first week of November, 1974.

On December 4, 1974, respondent sent an inquiry to appellants requesting information as to the status of the federal audit. No response to this inquiry was made until January 8, 1975. The response notified respondent of the disposition of the federal audit and included an amended 1969 California income tax return claiming the refund at issue in this appeal. Respondent denied the claim for refund on the basis of section 19053 of the Revenue and Taxation Code, which requires that a claim be filed within four years from the last day prescribed for filing the return or within one year from the date of the overpayment. This appeal followed, appellants claiming they are entitled to use the alternative statute of limitations in section 19053.6 of the Revenue and Taxation Code.

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 Sections 19053 and 19053.1, whichever period expires later.

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Section 19053.6 is the applicable statute of limitations for filing a claim for refund when a federal change is reported to or an amended return is filed with the Franchise Tax Board in compliance with section 18451 of the Revenue and Taxation Code.

In relevant part, section 18451 provides:

If the amount of gross income or deductions for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority.. .such taxpayer shall report such change or correction.. . within 90 days after the final determination of such change or correction. ...

Hence, when 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, under section 19053.6, has six months after filing the notice of change to file a claim for refund.

Appellants maintain the 90-day period did not begin until the first week of November, 1974. They contend no "final determination" was possible until they were informed of the amount of interest that would be paid with their refund, which was not until they received payment. Alternatively, appellants argue there was no "final determination" until October 19, 1974, the date they received the notice from the Internal Revenue Service which was dated **September 30, 1974**. Appellants have offered no authority for this position. Respondent contends the federal government made its "final determination" on September 30, 1974.

The "final determination" that section 18451 speaks of is the final determination of changes or corrections in gross income or deductions, not the final determination of the correct amount of interest payable with a refund. Respondent's regulations state, "A final determination is an irrevocable determination or adjustment of a taxpayer's federal tax liability from which there exists no further right of appeal. ..." (Cal. Admin. Code, tit. 18, reg. 18581-18061(c), subd. (6).) Appellants had nothing to appeal

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once the federal government indicated on September 30, 1974, that it would pay their claim in full.

With respect to appellants' alternative contention that there was no "final determination" until October 19, 1974, the date they received the notice from the Internal Revenue Service, we can only observe that similar notices are effective when sent rather than when received. (See, e.g., Rev. & Tax. Code, § 18593 and Int. Rev. Code of 1954, § 6213(a).) Since appellants have given us no reason to treat the notice in the instant case any differently, we must agree with respondent that the "final determination" was made on September 30, 1974.

Here, appellants failed to report the federal change to respondent within the 90-day period provided by section 18451 even though an inquiry was sent to them on December 4, 1974. A response to this inquiry by December 30, 1974, supplying information about the federal change, would have notified respondent as required by section 18451 and would have made section 19053.6 the applicable statute of limitations. Absent such a timely response, the refund claim was barred by the statute of limitations contained in section 19053 of the Revenue and Taxation Code. We therefore sustain respondent's action in this matter.

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

