

Appeal of Goldie Kahn

The only issue raised is whether appellant's claim for refund is barred by the statute of limitations.

In 1972 the Internal Revenue Service audited appellant's 1969 federal income tax return and found that capital gains transactions had been underreported and assessed an additional \$1,066.00 in federal income tax for that year. As a result of the federal adjustment, in 1973 respondent issued a notice of a proposed deficiency assessment for the year 1969 to appellant in the amount of \$154.56 plus \$29.10 in interest. Appellant duly protested the proposed assessment and stated that she was appealing the federal adjustment.

The federal dispute was ultimately resolved on December 31, 1973, when the final federal audit report was concurred in by the appellant. This report established that appellant was entitled to a credit, rather than subject to any additional federal income tax, for the year 1969. The Internal Revenue Service sent a statement of the resulting adjustment of appellant's account to her on February 18, 1974. This document merely indicated that appellant was entitled to a credit of \$117.00 for the year 1969, rather than subject to any federal income tax assessment for that year.

Appellant did not notify respondent of the resulting federal credit until, in response to respondent's follow up inquiry in August of 1974, she submitted a copy of the federal adjustment statement without any further explanation. While that document indicated that the federal matter was resolved, sufficient information was not disclosed therein to enable respondent to act on appellant's protest of the proposed assessment. In April of 1976 respondent advised appellant that more information was needed. Thereafter, on July 28, 1976, appellant filed a claim for refund, enclosing a copy of the final federal audit report, and basing the refund claim on the federal action that resulted in the federal credit for the year 1969.

After receiving a copy of the final federal audit, respondent cancelled the proposed assessment. However, respondent denied the claim for refund on the ground that it was barred by the statute of limitations.

The governing portion of section 19053 of the Revenue and Taxation Code provides:

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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, ...

Respondent contends that the above quoted language of section 19053 is mandatory and that under its clear terms the latest date for filing the refund claim was 'April 15, 1974. Appellant maintains that the dispute with the Internal Revenue Service took considerable time and was not resolved soon enough for a timely filing of a refund claim with respondent. **Consequently**, she contends that the provisions of section 19053 should not be applied.

In several prior appeals we have considered the construction to be given to section 19053 with respect to the period for filing refund claims where the overpayment was related to an appellant's resolution of a **tax** matter with the federal government. (See, e.g., Appeal of Maurice and Carol B. Hyman, Cal. St. Bd. of Equal., Feb. 26, 1969; Appeal of Estate of James A. Craig, Deceased and Viola F. Craig, Cal. St. Bd. of Equal., July 7, 1967; Appeal of Cleo V. Mott, Cal. St. Bd. of Equal., Aug. 7, 1963; Appeal of Daniel Gallagher Teaming, Mercantile & Realty co., Cal. St. Bd. of Equal., June 18, 1963; Appeal of Clarence L. and A. Lois Morey, Cal. St. Bd. of Equal., Aug. 3, 1965.) In doing so, we have consistently held that statutes of limitation must be strictly construed and that a taxpayer's failure to file a claim with respondent within the statutory filing period bars him from doing so at a later date.

Subsequent to those decisions, the Legislature enacted section 19053.6 of the Revenue and Taxation Code, a provision which enables taxpayers to file a refund claim with respondent after resolution of a federal tax dispute resulting in a federal adjustment, notwithstanding limitations otherwise imposed by section 19053. (Stats. 1969, ch. 980, p. 1947.)

Pursuant to section 19053.6, if a taxpayer reports the final determination of a change by the Internal Revenue Service to respondent, within 90 days of such final determination a claim for refund may be filed by the taxpayer within six months-from the date when such notice is filed with respondent, or within the period provided in section 19053, whichever period expires the

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later. Consequently, appellant could have filed notice with respondent of the final federal determination on or before May 18, 1974, and would have been entitled to file a refund claim with respondent within six months after giving notice. However, appellant did not notify respondent of the final federal adjustment until August of 1974. Thus, appellant did not file a refund claim within the period provided in either section 19053 or section 19053.6.

Appellant asserts that the federal matter was not resolved early enough for a timely filing of a refund claim with respondent. This allegation is clearly not supported by the facts. She concurred in the federal audit report by December 31, 1973, and a statement of the federal's adjustment was sent to her on February 18, 1974. Thus, appellant had ample time to file a protective claim for refund by April 15, 1974. Moreover, she also had the option of extending the time for filing a claim by notifying respondent of the final federal change within 90 days after the final determination of such change but failed to do so.

Accordingly, respondent's action in this matter must be sustained.

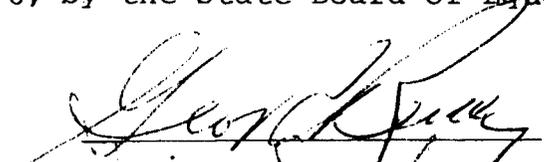
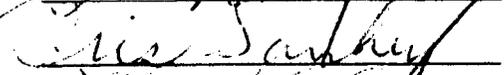
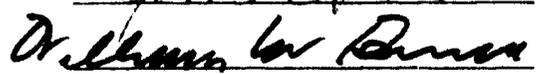
O R D E R

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

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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 Goldie Kahn for refund of personal income tax in **the amount** of \$41.00 for the year 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of April, 1978, by the State Board of Equalization.

 _____, Chairman
 _____, Member
 _____, Member
 _____, Member
_____, Member