78-SBE-072

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
MICHAEL AND ANTHA L. AVRIL)

For Appellants: Albert D. Brown
Certified Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

James C. Stewart
Counsel

O P I N I O N

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 Michael and Antha L. Avril for refund of personal income tax in the amount of $591.00 for the'year 1972.

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

Appellant Michael Avril was employed by the County of Los Angeles during 1972 and earned $12,968.64 from which $590.59 was withheld for state income taxes. Appellants did not file a return for 1972 until June 12, 1977. The return indicated no tax liability and requested a refund of $591.00. Respondent denied the claim for refund because the claim was not filed within four years of the due date of the return. Appellants have appealed from the denial of their claim for refund.

The general statute of limitations for credits or refund claims is set forth in section 19053 of the Revenue and Taxation Code, 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, ...

The last day for filing appellants' 1972 return was April 15, 1973. (Rev. & Tax. Code, § 18432.) Four years from that date was April 15, 1977. However, appellants did not file their return claiming a refund until June 12, 1977. Therefore, respondent properly denied the claim for refund as untimely.

Appellants' only argument on appeal is that the claim should not be denied because they were in prison and were unable to take care of their affairs. On this basis appellants urge that the statute of limitations should be disregarded and the amount claimed credited against their outstanding tax liability for 1971.

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 Manuel and Ofelia C. Cervantes, Cal. St. Rd. of Equal., Aug. 1, 1974.) The same rule applies here. The language of section 19053 is explicit and does not provide for any exceptions to its mandate. (Appeal of Waldermar H. Bendig, Cal. St. Bd. of Equal., Aug. 5, 1968; Appeal of E. C. and P. M. Braeunig, Cal. St. Bd. of Equal., Feb. 18, 1970.)

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 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 Michael and Antha L. Avril for refund of personal income tax in the amount of $591.00 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of August, 1978, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member