

Appeal of Beverly J. Waslauk

On January 30, 1978, appellant filed California personal income tax returns for the year 1972 and 1973. Since the returns indicated that the income tax withheld by appellant's employers exceeded her tax liability for each year, respondent treated the returns as claims for refund. Respondent determined that the 1973 return constituted a timely refund claim, and it therefore refunded appellant's excess withholding for that year. However, respondent disallowed appellant's refund claim for 1972 on the ground that it had not been filed within the limitation period prescribed by law. The correctness of that ruling is the question presented by this appeal.

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

For purposes of this section, the tax withheld by appellant's employers during 1972 is considered to have been paid by appellant on April 15, 1973. (Rev. & Tax. Code, § 18551.1, subd. (b).) One year from that date is April 15, 1974. The last day prescribed for filing a return for the 1972 calendar year was April 15, 1973. (Rev. & Tax Code, § 18432.) Four years from that date expired on April 15, 1977. Under section 19053, therefore, appellant's refund claim could not be allowed unless it was filed by April 15, 1977. Since it was not filed until January 30, 1978, respondent properly denied it for untimeliness.

Appellant argues that it is unfair to apply the statute of limitations because the public is generally unaware of it. It is well settled, however, that ignorance of the law does not excuse the delinquent filing of claims for refund. (Appeal of Tolbert D. Spradlin, Cal. St. Bd. of Equal., Jan. 7, 1975; Appeal of E. C. and P. M. Braeunig, Cal. St. Bd. of Equal., Feb. 18, 1970.)

For the reasons expressed above, respondent's action in this matter will be sustained.

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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 ORDFRED, 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 Beverly J. Waslauk for refund of personal income tax in the amount of \$33.99 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this **9th** day of **January, 1979**, by the State Board of Equalization.

Hollis B. Burch Chairman
John K. King, Member
George P. Kelley, Member
_____, Member
_____, Member