

Appeal of Stanley R. and Cheryl J. Huddleston

The sole issue presented by this appeal is whether appellants' claims for refund are barred by the statute of Limitations.

Appellants' 1972 and 1973 federal income tax returns were audited by the Internal Revenue Service in 1975; an audit adjustment for the year 1973 was later issued disallowing the claimed deduction of certain legal expenses. Based upon the federal adjustment, respondent issued a proposed assessment on May 10, 1976 for additional personal income tax for 1973. Appellants did not protest respondent's action, and the deficiency was subsequently paid.

In 1977, the Internal Revenue Service issued an audit adjustment for the year 1972; respondent issued a proposed assessment based upon the federal adjustment on June 15, 1977. Appellants protested respondent's action, claiming that the federal audit change was being appealed. On May 12, 1978, the final federal audit report for 1972 was issued. This report affirmed a prior determination that Mr. Huddleston's receipt of certain stock in 1972 was taxable, thereby increasing appellants' income for that year. The report also established, however, that Mr. Huddleston's basis in this stock was to be increased. This latter determination resulted in a refund to appellants for 1973 and several subsequent years because their capital gain from the installment sale of the stock was accordingly reduced.. Appellants apparently filed amended federal returns for 1974, 1975, and 1976, and subsequently received refunds for those years.

On November 6, 1978, respondent received, a copy' of the final federal audit report for 1972 from the Internal Revenue Service; a copy of that report was provided to respondent by appellants' attorney on February 28, 1979. Respondent later issued a revised proposed assessment and, on May 5, 1980, affirmed that proposed assessment. On July 29, 1980, appellants filed the subject claims for refund, which were disallowed by respondent on the basis that they were barred by the statute of limitations. Appellants' protest of that action resulted in this appeal.

Appellants' argument, while somewhat unclearly framed, appears to be that their claims for refund are not barred by the statute of limitations because they were filed on July 29, 1980, less than three months after respondent's May 5, 1980 issuance of its revised proposed assessment for 1972. A review of the relevant statutes

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reveals that appellants' argument is without merit, and that respondent properly concluded that the subject claims for refund were barred by the statute of limitations.

The basic statute of limitations for claims for refund is found in Revenue and Taxation Code section 19053, which provides, in relevant 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 overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer, ...

In numerous prior appeals, we have considered the construction to be given to section 19053. (See, e.g., Appeal of Maurice and Carol B. Hyman, Cal. St. Bd. of Equal., Feb. 26, 1969; Appeal of Dwain G. and Mary M. Rice, Cal. St. Bd. of Equal., Aug. 7, 1967.) We have consistently held that statutes of limitation must be strictly construed, and that a taxpayer's failure to file a claim for refund with respondent within the relevant statutory filing period bars him from doing so at a later date. In the instant appeal, appellants' July 29, 1980 filing was clearly outside the four-year statutory filing period set forth in section 19053; to have fallen within that period, the 1973 and 1974 refund claims would have had to have been filed no later than April 15, 1978 and April 15, 1979, respectively.

Subsequent to the decisions cited above, Revenue and Taxation Code section 19053.6 was enacted. In relevant part, that section provides as follows:

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 [Section 19053]..., whichever period is later.

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Insofar as pertinent to the instant appeal, section 18451 requires taxpayers to notify respondent of any federal adjustment to their gross income or deductions within 90 days of the final determination of such adjustments.

Pursuant to the express provisions of section 18451, appellants were required to file notice with respondent of the final federal determination, on or before August 10, 1978 (90 days from the May 12, 1978 final federal adjustments to their 1972 federal income tax return). Had appellants so notified respondent, they would have been entitled to file their 1973 refund claim within six months after giving notice, in this case, as late as February 10, 1979.^{1/} However, appellants did not notify respondent of the final federal adjustments until February 28, 1979. Thus, appellants failed to file the subject refund claims within the periods set forth in either section 19053 or section 19053.6.

^{1/} Insofar as pertinent to this appeal, section 19053.6 provides that the filing period for refund claims is either the period provided for therein or the four-year period set forth in section 19053, whichever period is later. As previously noted, pursuant to section 19053, appellants' 1974 claim for refund could have been filed as late as April 15, 1979. Accordingly, only appellants' 1973 refund claim was subject to the statute of limitations period set forth in section 19053.6.

