

Appeal of Richard M. and Claire P. Hammerman

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

On April 14, 1977, appellants paid \$4,000 to cover their estimated tax liability for 1976 and requested an extension to file that year's return. Appellants were granted an extension to October 15, 1977. They filed their 1976 return on September 10, 1982, claiming an overpayment of \$3,431. This return was treated as a claim for refund. On October 28, 1982, the Franchise Tax Board informed appellants that the last statutory date on which they could file a timely claim for refund for 1976 was October 15, 1981. Since their refund claim had been filed after that date, appellants' were told that it was barred. Respondent's determination led to this appeal.

Revenue and Taxation Code section 19053 provides, in relevant part, as follows:

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 later, unless before the expiration of the period a claim therefor is filed by the taxpayer

Respondent views the above quoted language as mandatory and as indicating that the latest date on which appellants could have timely filed their claim for refund was October 15, 1981, i.e., four years from the last day prescribed for the filing of their 1976 return. Appellants merely state that they were unable to file their refund claim before the due date because they were out of the country for an extended period of time and did not have their records in order.

We have had numerous occasions to deal with the issue presented by this appeal. (See, e.g., Appeal of Robert B. and DeVonne B. Marien, Cal. St. Bd. of Equal., Oct. 14, 1982; Appeal of Wendell Jenkins, Sr., Cal. St. Bd. of Equal., June 23, 1981; Appeal of Manuel and Ofelia C. Cervantes, Cal. St. Bd. of Equal., Aug.-1, 1974; Appeal of Estate of James A. Craig, Deceased, and Viola F. Craig, Cal. St. Bd. of Equal., July 7, 1967.) We have consistently held that the statute of limitations set forth in section 19053 must be strictly construed and that a taxpayer's failure, for whatever reason, to file a

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claim for **refund** within the statutory period bars him from doing so at a later date. We see no reason to reach a different conclusion in the instant matter.

For the foregoing reasons, respondent's action in this matter must be upheld.

