84-SBE-108

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
ROBERT' H. AND MARY I. ROYSTER)

OPINION ON PETITION FOR REHEARING

On December 13, 1983, we sustained the Franchise Tax Board's denial of the claim of Mary I. Royster and the late Robert H. Royster for refund of personal income tax in the total amount of $9,630.47 for the years 1964, 1965, 1966, and 1967. In her appeal, appellant Mary Royster contended that the assessment for 1964 was barred by the four-year statute of limitations period of section 18586 of the Revenue and Taxation Code. We noted that respondent's close-out transcript indicated that appellant's 1964 tax return was filed timely; however, since neither appellant nor respondent furnished any documentation to show when the notice of proposed assessment for 1964 was issued, we could not determine that respondent's assessment for 1964 was barred. Because appellant had the burden of proof, we found that respondent's action was timely. Subsequently, appellant filed a petition for rehearing in which she supplied a copy of the notice of additional tax dated March 31, 1970. Although this notice was issued after the four-year statute of limitations period of section 18586, it shows that appellant was assessed a 25-percent delinquent filing penalty. Therefore, we are once again faced with a record of conflicting evidence. We cannot determine from this record when appellant's 1964 tax return was filed. Without proof of that date, we cannot determine that respondent's assessment for 1964 was barred. Appellant has provided no new facts which would cast doubt upon respondent's determination of her income tax liability for the years 1964, 1965, 1966, and 1967. Therefore, we must affirm our prior action in this case.

Appeal of Robert H. and Mary I. Royster

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 18596 of the Revenue and Taxation Code, that the petition of Robert H. Royster, deceased, and Mary I. Royster for rehearing of their appeal from the action of the Franchise Tax Board in denying their claim for refund of personal income tax in the total amount of $9,630.47 for the years 1964, 1965, 1966, and 1967 be and the same is hereby denied, and our order of December 13, 1983, is hereby affirmed.

Done at Sacramento, California, this 27th day of June, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis and Mr. Bennett present.

Richard Nevins, Chairman

Ernest J. Dronenburg, Jr., Member

Conway H. Collis, Member

William M. Bennett, Member

_____, Member