



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
PHYLLIS MARSHALL)

Appearances:

For Appellant: **Benton F. Marshall**

For Respondent: **W. M. Walsh**, Assistant Franchise Tax
Commissioner

O P I N I O N

This appeal is made pursuant to Section 20 of the Personal Income Tax Act (Chapter 329, Statutes of 1935, as amended) from the action of the Franchise Tax Commissioner in denying the **claim** of Phyllis Marshall for a refund of personal income tax in the amount of **\$25.87** for the year ended December 31, 1935.

The Appellant and her husband, **Benton F. Marshall**, filed separate income tax returns for the year 1935, the returns being filed and the tax shown thereon being paid on March 12, 1936. Pursuant to a notice of additional tax proposed to be assessed mailed by the Commissioner on March 21, 1939, Appellant's husband paid a tax on **income** which had been included in the amount reported by Appellant for the year 1935. The Appellant thereupon on May 12, 1939, filed her claim for a refund of the tax which she had erroneously paid on such income. The Commissioner, though conceding the inequity of retaining the tax paid by the Appellant on income with respect to which a tax was also paid by her husband, denied Appellant's claim for refund on the ground that it had not been filed within the time required by Section 20 of the Personal Income Tax Act.

At the time of the filing of the Appellant's claim, Section 20 required that a claim be filed by the taxpayer within three years from the time the **return was** filed, or within two years from the time the tax was paid, whichever period expires the later. If, accordingly, the law in effect-at that **time is controlling, the** action of **the Commissioner** in denying the claim was **correct**. That Section, however, as amended by Chapter 915, Statutes of 1939, effective July 25, 1939, permits the filing of a claim for refund within four years from the last day **prescribed** for filing the return, or within one year from the date of the overpayment, **whichever** period expires the later.

It should be observed at the outset that there is no constitutional objection to the application of the four year limitation period to claims barred prior to the effective date of Chapter 915. Bickerdike v. State of California, 144 Cal. 681. So far as the matter of statutory construction is concerned,

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amendments increasing limitation periods have been held to be applicable to pre-existing claims not yet barred in the absence of specific declarations that such was to be their effect. See Weldon v. Rogers? 151 Cal. 432, Davis & McMillan v. Industrial Accident Commission, 198 Cal. 631.

Section 20 of the Personal Income Tax Act, as amended by Chapter 915, Statutes of 1939, provides in part as follows:

"If, in the opinion of the commissioner, or the State board, as the case may be, there has been an overpayment of tax, penalty or interest by a taxpayer for any year for any reason, the amount of such overpayment shall be credited against any taxes then due from the taxpayer under this act, and the balance refunded to the taxpayer. No such credit or refund shall be allowed or made until approved by the State Board of Control. No such 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 such period a claim therefor is filed by the taxpayer. . . ."

(Underscoring added.)

In view of the principle of statutory construction that whenever possible all the words of a statute are to be given some effect (Crowe v. Boyle, 184 Cal. 117, Langenour v. French, 34 Cal. 92), it seems only proper to conclude that the phrase "for any year" constitutes an expression of a legislative intent that from and after the effective date of Chapter 915 a refund may be allowed if a claim therefor is filed within the four year period provided therein. Since the Appellant's claim was filed within that period, the overpayment of tax having been made on March 12, 1936, and the claim for refund having been filed on May 12, 1939, it should not, in our opinion, have been disallowed on the ground that it was not filed within the period provided by the Act.

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 that the action of Chas. J. McColgan, Franchise Tax Commissioner, in denying the claim of Phyllis Marshall for a refund of personal income tax in the amount of \$25.87 for the year ended December 31, 1935, pursuant to Chapter 329, Statutes of 1935, as amended, be and the same is hereby reversed. The Commissioner is hereby directed to give credit to said Phyllis Marshall for said amount of \$25.87 paid by her for said year or to refund said amount to her and otherwise to proceed in conformity with this order.

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Done at Sacramento, California, this 15th day of December, 1941, by the State Board of Equalization.

Fred E. Stewart, Member
George R. Reilly, Member
Wm. G. Bonelli, Member

ATTEST: Dixwell L. Pierce, Secretary

