



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
 DANIEL GALLAGHER TEAMING,)
 MERCANTILE AND REALTY CO.)

Appearances:

For Appellant: Christopher P. Miller,
Certified Public Accountant

For Respondent: Crawford H. Thomas,
Associate Tax Counsel

OPINION

This appeal is made pursuant to Section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Daniel Gallagher Teaming, Mercantile and Realty Co. **for refund of franchise tax in the amounts of \$304.94 and \$160.12 for the income years 1952 and 1953, respectively.**

Since the filing of this appeal, Respondent has stipulated that Appellant **is** entitled to the refund which it claimed for the income year 1952. The only issue remaining concerns the application of the statute of limitations to the refund claimed for the income year 1953.

The claim in question is based upon an adjustment by the Federal income tax authorities. On February 11, 1958, a Federal Revenue Agent issues a report which indicated an increase in net income for 1952, a decrease in net income for 1953 and a decrease in net losses claimed by Appellant for the years 1954 through 1956. Appellant reached a settlement with the Federal authorities on December 23, 1958, on the basis that there was a deficiency for 1952 and an overpayment for 1953. In February 1959, Respondent obtained knowledge that Appellant's Federal returns had been examined and wrote to Appellant for information concerning the outcome. On February 18, 1959, Appellant replied that the matter had been settled. After further investigation, Respondent issued a proposed assessment for the income year 1952. Appellant paid the deficiency and then claimed a refund of the payment, which Respondent has conceded should be allowed. The refund claim for the income year 1953, the claim now in question, was filed on November 3, 1959.

Appeal of Daniel Gallagher Teaming,
Mercantile and Realty Co.

Insofar as is relevant here, Section 26073 of the Revenue and Taxation Code provides that

No . . . 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

It is undisputed that under the express terms of this section, the time in which Appellant could have filed an effective claim for refund expired on **March 15, 1958**. Appellant contends, however, that the resulting denial of its claim is inequitable and could not be a result intended by the Legislature since the time in which the Franchise Tax Board may assess a deficiency is extended where the Federal authorities **change** the reported income of a taxpayer.

The statutory provisions that extend the time for making assessments after a change by the Federal authorities do not refer in any manner to refund claims. (See Rev. & Tax. Code, §§ 25673, 25674,) Because the normal time for initiating Federal adjustments is shorter than the normal time allowed for claiming a refund of state tax (cf. Rev. & Tax. Code, § 26073 and Int. Rev. Code, §§ 6501, 6503) a taxpayer will ordinarily be in a position to file a timely claim for refund of state tax based on a proposed Federal adjustment. If a taxpayer agrees with the Federal authorities to extend the time, the period for claiming a refund of state tax is also extended. (Rev. & Tax. Code, §§ 26073a, 25663a.) It has not been established in this case that there was such an agreement which would serve to extend the time for claiming the refund in question beyond March 15, 1958. Appellant nevertheless had ample time after receiving the Federal Revenue Agent's report to file its refund claim before that **date**. Having failed to do so, the refund is clearly barred by the previously quoted portion of Section 26073 of the Revenue and Taxation Code.

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 26077 of the Revenue and Taxation Code, that the action

Appeal of Daniel Gallagher Teaming,
Mercantile and Realty Co.

of the Franchise Tax Board in denying the claims of Daniel Gallagher Teaming, **Mercantile** and Realty Co. for refund of franchise tax in the amounts of **\$304.94** and **\$160.12** for the income years 1952 and 1953, respectively, be reversed with respect to the income year 1952 and sustained **with** respect to the income year 1953.

Dated at Sacramento, California, this 18th day of June, 1963,
by the State Board of Equalization.

John W. Lynch, Chairman

Paul R. Leake, Member

Richard Nevins, Member

 , Member

 , Member

ATTEST: Dixwell L. Pierce, Secretary