



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CLEO V. MOTT)

For Appellant: Cleo V. Mott, in pro. per.

For Respondent: Burl D. Lack, Chief Counsel;
A. Ben Jacobson, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Cleo V. Mott for refund of personal income tax and penalty in the total amount of \$28.75 for the year 1952.

In accordance with Federal adjustments made for the year 1952, Respondent issued a notice of proposed assessment on March 22, 1957. In 1958 Appellant paid both the Federal and State assessments and filed a claim for refund of the Federal but not the State payment. Respondent did not know of the Federal claim. In 1961 the Federal claim was allowed and a refund made. Thereafter, on June 27, 1961, Appellant filed a claim for refund with Respondent which has been denied because of the statute of limitations (Rev. & Tax. Code, § 19053) which provides 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 the later, unless before the expiration of the period a claim therefor is filed by the taxpayer, . . .

Appellant does not contend that his claim was filed within the time prescribed by the statute but states that he believed that a claim was not necessary until after the Federal matter had been settled, and that Respondent did not inform him to the contrary.

We do not believe it necessary to cite authority for the propositions that (1) a taxpayer's misconception as to the law does not excuse the late filing of a claim for refund, and (2) there is no obligation on the part of a taxing agency to inform a taxpayer of the time within which such a claim must be filed,

