STATUTES OF LIMITATION.
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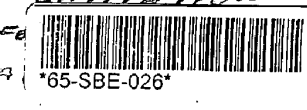

BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of")
)
AMERICAN INSTITUTE OF INTERIOR DESIGNERS)

Appearances:

For Appellant: David Livingston
Attorney at Law

For Respondent: Peter S. Pierson
Associate Tax Counsel"

O P I N I O N

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 the American Institute of Interior Designers for refund of franchise tax in the amounts of $1,552.78 and $1,577.78 for the taxable years 1955 and 1956; respectively.

On October 3, 1955, respondent Franchise Tax Board advised appellant in writing that as a business league it was exempt from franchise tax pursuant to Section 23701e of the Revenue and Taxation Code. The letter stated appellant would not be required to file franchise tax returns unless its character, purposes', or methods of operation changed. Relying thereon, returns were not filed for taxable years 1955 and 1956.

Upon subsequently discovering appellant was paying tax and filing regular income tax returns with the federal government, respondent, on August 28, 1958, inquired whether appellant had changed its operation. On October 21, 195.8,

appellant's counsel wrote that no changes had occurred but explained that the Internal Revenue Service had 'denied exemption under its identical statute. (*Int.* Rev. Code of 1954, § 501(c)(6).) Counsel also wrote':-

> ...I am at the present time preparing a protest of this taxation and it will be contested....

On October 28, 1958, respondent replied that in view of the federal ruling, respondent's, prior granting of an exemption was in error and that appellant was subject to franchise tax. It noted appellant's protest to the federal ruling and added:

> ...If the corporation is ultimately ruled exempt from federal tax, please advise, and we will reconsider our ruling. We also suggest that the corporation file claims for refund for any franchise tax paid pursuant to this ruling *to* protect it from the statute of limitations.

On November 7, 1958, respondent wrote appellant asking it to file tax returns beginning with the year 1955, its year of incorporation.

Upon appellant's failure to do so, arbitrary assessments were issued on February 16, 1959. Appellant's counsel immediately contacted a representative of respondent's San. Francisco office, stating opposition to the assessments on the basis that appellant was an exempt business league. The assessments *were* abated.

On February 25, 1959, returns were filed for the aforementioned years and taxes paid;-

A formal refund claim was filed *for* the year 1956 on September 30, 1960, and amended on October 13, 1960. A. formal refund claim for 1955 was also filed on October 13, 1960. These,claims did not mention the federal contest.

On October 14, 1960, respondent wrote that it was holding the claims in abeyance pending the outcome of the protest to the federal ruling.

Appellant ultimately prevailed in its litigation with the federal government when it was held to be an exempt business league in American Institute of Interior Designers v. United States, 208 F. Supp. 201, in August 1962. Appellant's counsel advised respondent of this. Respondent reinstated appellant's exempt status but ultimately denied the refund claims, asserting they were barred by the statute of limitations.

Section 26073 of the Revenue and Taxation Code provides for such a statutory bar after four years from the last day prescribed for filing a return or after one year from the date of payment, whichever period expires the later.;'

One of appellant's contentions is that informal' claims for refund were filed within the statutory period, perfected after the statutory period, and therefore the claims should be deemed to have been filed on time. It also' argues that the time prescribed for filing returns for 'the, years involved was not earlier than the date respondent requested them and, finally, that respondent is estopped 'from denying the refunds.

In Crenshaw v. Hrcka, 237 F.2d 372, after a deficiency was asserted but prior to payment, the taxpayer wrote a letter to the federal internal revenue agent in charge, confirming an agreement whereby the taxpayer was to pay the income tax deficiency in installments and as soon as the entire amount was paid was to file refund claims for the amounts the taxpayer considered proper. After the statutory period formal refund claims were filed. The court held the earlier letter constituted a sufficient informal refund claim to stop the running of the, federal limitation statute, although it was not perfected until after the statutory period. The court said the earlier letter met the purpose of the statute which is to apprise the taxing authorities of the'fact that the taxpayer is asserting a claim. The lower court also had explained that the Internai Revenue Service was well aware of taxpayer's contentions in view of previous conversations.' (Hrcka v. Crenshaw, 140 F. Supp. 350, at 352.)

Additional support for appellant's position is found in Newton v. United States, 163 F. Supp. 614. There the taxpayer wrote to the Internal Revenue Service asking that the final determination of a proposed deficiency be deferred pending, the outcome of a suit brought by the taxpayer on the same issue for an earlier year. Subsequently, he paid the

deficiency to stop the running of interest, pursuant to an *oral* understanding with an internal revenue agent that his payment would not interfere with recovery of the amount if he were successful in his suit. A memorandum in the file of the Internal Revenue Service confirmed this understanding. In holding that this combination of circumstances constituted an informal claim, the court stated that *'Necessarily each case must be decided on its own peculiar set of facts with a view toward determining whether under those facts the Commissioner knew, or should have known, that a claim was being made."

From an equitable standpoint, appellant's position;' has considerable merit. It was initially advised by respondent that it was exempt and that *no* returns were required unless its character, purpose, or method of operation changed. Those circumstances were not changed. Because of an erroneous federal ruling, appellant was then advised in November 1958 to file returns and pay tax for the periods in question. There was, therefore,' some ground for believing the start of the four year statutory period was not earlier than that date. Moreover, since the payment here involved was made because of respondent's determination based on federal action, it is especially appropriate that the final disposition of the payment should rest upon the ultimate outcome of the federal action.

Pursuant to the previously cited authorities,, appellant's letter of October 21, 1958, may be regarded as an informal claim when viewed in connection with the additional circumstances of respondent's reply' that it would reconsider its ruling if the corporation were. finally ruled exempt from federal tax,' the conversation with respondent's representative requesting abatement of the arbitrary assessments, the filing of returns and payment of tax shortly thereafter, and respondent's letter of October 14, 1960, stating that the formal claims filed in that year would be held in abeyance pending the outcome of the'protest against the federal ruling. 'The fact that, returns were filed and payment was made shortly after appellant's counsel contacted respondent's representative supports the inference that payment was made with the understanding that it could be recovered depending upon the result of the federal suit. Respondent's letter of October 14, 1960; confirms that such was its understanding at all times after the payment.

We are not unmindful of other authorities which have taken a strict view of what constitutes a claim. for refund.

(See, for example, Tobin v. Tomlinson, 310 F.2d 648.) We also recognize the desirability of formal refund claims and have no intention of encouraging informal claims. On the particular facts of this case, however, we conclude that timely claims were made.

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 of the Franchise Tax Board in denying the claims of American Institute of Interior Designers for refund of franchise tax in the amounts of $1,552.78 and $1,577.78 for the taxable years 1955 and 1956, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 3d day of August, 1965, by the State Board of Equalization.

John W. Lynch, Chairman

Paul R. Leake, Member

Richard Nevins, Member

Geo. R. Reilly, Member

_____, Member

ATTEST: _____, Secretary