



BEFORE THE STATE BOARD OF 'EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)

ROBERT A. AND NANCY R. JACOBS)

For Appellants: Lt. Col. Robert A. Jacobs
in pro, per.

For Respondent: Peter S. Pierson
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 claims of Robert A. and Nancy R. Jacobs for refund of personal income tax in the amounts of \$15.15, \$19.43, \$15.40, \$20.94, \$20.00, \$32.22, \$30.70, \$39.62 and \$39.81 for the years 1950 through 1958, respectively.

Appellant, Lt. Col. Robert A. Jacobs, entered the military service on February 20, 1941, in Los Angeles, California, while a resident of this state. From December 1945 until August 1951, appellants were in California because of his military assignments. Since August 1951, he has been assigned outside the state and, therefore, after that date appellants were not physically present in California except for relatively brief intervals. Prior to 1963; appellants did not file any California income tax returns.

In February 1963, appellants contacted respondent Franchise Tax Board's office to determine whether, during past years, they were California residents and therefore liable for California personal income tax on their net income. Advised of respondent's view that appellants were

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California residents notwithstanding the out-of-state military assignments, appellants filed returns and paid back taxes. **A11** taxes for the years 1950 through 1963, inclusive, were paid by the end of May 1963.

In Appeal of Harold L. and Miriam Jane Naylor, Cal. St. Bd. of Equal., Dec. 11, 1963, it was held, in a similar situation, 'that the tax was inapplicable.

On June 1, 1964, appellants filed refund claims for the years 1950 through 1963, inclusive. The claims were allowed for the years subsequent to 1958 but those for prior years were denied, respondent **asserting** they were barred by the statute of limitations.

Section 19053 of the Revenue and Taxation Code provides that no refund shall be allowed 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 for refund is filed by the taxpayer.

With respect to the years 1950 to 1958, no refund claims of, any sort, formal or informal, were filed within the statutory period. 'Appellants contend, nevertheless, that inasmuch as the back taxes never should have been paid they should be refunded in full, particularly in view' of the fact that appellants voluntarily contacted respondent and were' advised they were **taxable** residents of this state.

It should be noted that the primary purpose of the statute of limitations is to bar untimely though otherwise valid claims. If its **purpose** were merely to bar claims invalid on the merits, the statute would be useless.

Appellants' situation is no different from that of other taxpayers who paid taxes, on their own volition or pursuant to assessments, in accordance with the prevailing interpretation prior to the decision in the Naylor appeal. Whenever an interpretation is changed as the result of a holding by a court or by this board, refunds can be granted to any taxpayer only to the extent permitted by the statute of limitations.

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If appellants were not in agreement with respondent's interpretation of the law, an interpretation applied against all similarly situated taxpayers until the Naylor decision, appellants' recourse under section 19053 was to file refund claims within one year from the date of payment.

We have no alternative but to follow the statute and sustain respondent's action.

' 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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Robert A. and Nancy R. Jacobs for refund of personal income tax in the amounts of \$15.15, \$19.43, \$15.40, \$20.94, \$20.00, \$32.22, **\$30.70, \$39.62** and \$39.81 for the years 1950 through 1958, respectively, be and the same is hereby sustained.

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

John W. Lynch, Chairman

Paul R. Leake, Member

_____, Member

Member

Member

Member

Member

ATTEST: [Signature], Secretary