

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CLARENCE L. AND A. LOIS MOREY)

Appearances:

For Appellants: Clarence L. Morey
in pro. per.

For Respondent: Crawford H. Thomas
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 Clarence L. and A. Lois Morey for refund of personal income tax in the amounts of \$138.65, \$105.60 and \$202.80 for the years 1952, 1954 and 1955, respectively.

On their 1952 California joint income tax return, appellants deducted a \$2,515 contribution to the Church of Jesus Christ, Los Angeles, California.

Discovering that a federal revenue agent had examined appellants' 1952 federal income tax return, respondent, Franchise Tax Board, on November 26, 1954, wrote appellants requesting a copy of the agent's report. On December 1, 1954, appellants sent the report with a letter stating that "If this is not what you want, please notify us further." The report indicated a disallowance of the \$2,515 contribution deduction.,

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Based on the report, respondent issued a notice of proposed assessment on December 30, 1954, disallowing the 1952 deduction. Appellants paid the assessment shortly thereafter. On timely filed 1954 and 1955 state tax returns no deductions were taken for contributions to the same church. The self-assessed taxes for those years were paid when the returns were filed.

Appellants brought action in the federal courts for refund of 1952, 1954 and 1955 federal taxes paid because of the disallowance of contributions to the church in question.. In 1962, appellants prevailed in this litigation.. (Morey v. Ridde11, 205 F. Supp. 918.)

The first disclosure of any sort to respondent that appellants were litigating this contribution question in the federal courts was in their 1956 state return, filed April 10, 1957. On their schedule of contributions for 1956 appellants wrote: "Church of Jesus Christ \$5700. Listed but not claimed. Subject to hearing pending in tax court."

On August 31, 1963, appellants wrote to respondent that "We are enclosing amended returns for the years of 1954, 55, ... on our California State Income Tax.... We are also requesting a refund of the monies paid because of your additional assessment for the year of 1952...." In this letter appellants based the refund claims on the favorable outcome of the federal litigation.

Respondent denied the refund claims, asserting they were barred by the statute of limitations.

Section 19053 of the Revenue and Taxation Code provides that a claim for refund must be filed within four years from the last day prescribed for filing a return or one year from the date of payment, whichever period expires the later. In appellants' case, the time for filing a refund claim for the most recent of the payments in question expired on April 15, 1960.

Clearly, appellants did not file formal refund claims within the statutory period. We have considered whether anything filed by them constituted an informal claim within the statutory period, which was perfected after the statutory period by the 'August 31, 1963, letter.

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As stated in Rosengarten v. United States, 181 F. Supp. 275, 279):

An act which merely makes it possible for the Commissioner to discover the existence of a claim if he makes an **independent** investigation and sorts out the clues **will** not do. The **cases** supporting plaintiffs' position **all** reveal that the device considered an informal claim was some definite instrument ... which indicated that the taxpayer questioned a tax payment which he had made for a particular year. Each device embodied a clarity which insured that the Commissioner **would not** be misled.

Before we can hold that there has been an informal claim filed within the statutory period, we must be satisfied that it contains the means by which the Commissioner will be apprised that a certain tax is being contested without resort to any extraneous factors.

The court also said at page 279:

... a specific taxpayer may claim a refund for a specific year in a formal fashion even beyond the limitation period if the claim relates back to an informal claim filed by **that** taxpayer for that year within the limitation period. We are aware of no case, however, where a court has held that a request for refund for **a particular** year constituted a claim for **another** year....'

Whether or not the statement in appellants' 1956 return *was* a refund claim for that year, it did not refer to any of the years 1952, 1954 or 1955, the only years here in question.' A deduction had not even been claimed on the state returns for the years 1954 and 1955. Under such circumstances

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it is clear that the 1956 return did not constitute an **informal** claim for refund for the years 1952, 1954 and 1955.

It is also clear that the letter of December 1, 1954, written in response to respondent's request for a copy of the revenue agent's report, in no way purported to be a claim for refund. There **was** nothing stated in the letter to indicate the writer considered it as such, nor was it in any way regarded as such by respondent. (Cf., Philipsborn v. United States, 53 F.2d 133.)

Appellants have also alleged that the 1952 assessment was paid under written protest. Although given the opportunity to do so, they have not produced a copy of any such protest, nor do respondent's files disclose any. It is the responsibility of the taxpayer to establish that a claim for refund has been filed within the statutory period. (Rosengarten v. United States, 181 F. Supp. 275, supra.) 'A written protest is not normally regarded as a claim for refund. (International Arms & Fuze Co, v. United States, 37 F.2d 771.) In any event, appellants have **not** established that the 1952 payment was accompanied by a written protest.

Until 1963, long after the expiration of the period prescribed by section 19053, respondent did not know, nor did it have good reason to believe that appellants questioned the **payments** they had made for the years 1952, 1954 and 1955. Under the circumstances of this case, we have no alternative but to find that the claims were barred.

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

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action of the Franchise Tax Board in denying the claims of Clarence L. and A. Lois Morey for refund of personal income tax in the amounts of \$138.65, \$105.60 and \$202.80 for the years 1952, 19.54 and 1955, 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

George J. Kelly, Member

_____, Member

ATTEST: [Signature], Secretary