

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
WALDEMAR H. **BENDIG**)

For Appellant: Waldemar H. **Bendig**, in pro. per.
For Respondent: Crawford H. Thomas
Chief Counsel
Joseph W. Kegler
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 Waldemar H. **Bendig** for refund of personal income tax in the amount of \$43.26 for the year **1959**.

The sole **question** for decision is whether the claim for refund filed by appellant was barred by the statute of **limitations**.

On April 4, **1960**, appellant filed a timely **1959** personal income tax return with respondent. In computing the tax from the tax schedule appellant made a mathematical error. As a result he remitted \$84.38, which was \$43.26 more than the tax properly due. Thereafter appellant suffered a nervous breakdown, was hospitalized, and finally became permanently disabled. He has had no taxable income since **1960**.

Appellant filed a claim for refund of the amount of his overpayment for **1959** on May 24, **1967**. Respondent denied that claim on the ground that **it** had not been filed within the allowable statutory period. That action gave rise to this appeal.

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Appellant **states** that when he **realized** he had overpaid **his** California personal income tax for 1959 he was in poor health and was unable to file a claim **for refund**. He also states that he just assumed that upon review of his return **respondent would** catch **appellant's** computational error and would send him a refund of the overpayment.

In support of its denial of appellant's claim for refund, respondent relies on the limitation period for the filing of such a refund claim. (Rev. & Tax. Code, § 19053.) In **addition**, respondent contends that it has no duty to discover a taxpayer's overpayment and to send him a refund. **We must agree.**

The governing portion of section 19053 provides:

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,...** (Emphasis added,)

Clearly the responsibility for initiating a claim for refund rests upon the taxpayer, not upon respondent.

In the instant case the last date on which appellant could have filed a timely claim for refund of his **1959** tax overpayment was April 15, 1964, **four years after** the last day prescribed for filing his **1959** return. Appellant's claim for refund was filed on May 24, **1967**, **more than three years after the end of the allowable statutory period.**

Although appellant's ill health and permanent disability are unfortunate circumstances, they do not toll the statute of limitations. If appellant was unable to file his own claim for refund, it was his responsibility to retain someone to take that affirmative action on his behalf before the expiration of the statutory period, since he failed to do this, we have no choice but to obey the mandatory language of section **19053** of the Revenue and Taxation Code, and to agree with respondent that appellant's claim for refund was **barred by** the statute of limitations.


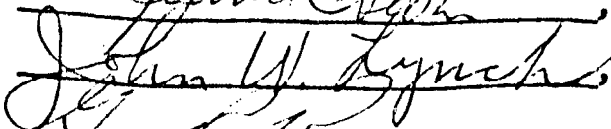
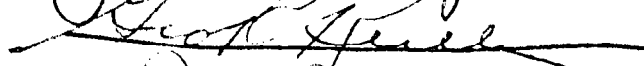
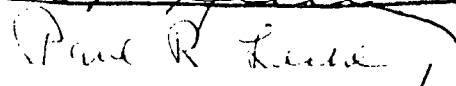

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O R D E R

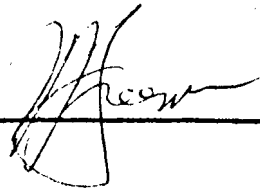
Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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 claim of Waldemar H. Bendig for refund of personal income tax in the amount of \$43.26 for the year 1959, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of August, 1968, by the State Board of Equalization.

 , Chairman
 , Member
 , Member
 , Member
 , Member

ATTEST:



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