

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of            )  
  )  
FRANCIS L. AND CAROLE A. CARRINGTON )

For Appellants: Touche Ross & Co.,

For Respondent: Crawford H. Thomas  
Chief Counsel

Benjamin F. Miller  
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 Francis L. and Carole A. Carrington for refund of personal income tax in the amount of \$529.96 for the year 1964.

The issue presented is whether appellants' claim for refund for 1964 was barred by the statute of limitations.

Appellants' federal returns for the years 1963 through 1965 were audited by the Internal Revenue Service. Pursuant to that audit appellants entered into a written agreement with the Internal Revenue Service -extending the period of limitation for assessment of federal income tax for the years 1963 through 1965 until December 31, 1968. In July of 1968 an agreement was reached with respect to certain adjustments to the federal returns for the three years under audit. Those adjustments resulted in deficiencies for 1963 and 1965 and an overpayment in 1964. The adjustments made with respect to each year were unrelated and were not the result of shifting income between the various years. Appellants failed to notify respondent of those changes within 90 days as required by section 18451 of the California Revenue and Taxation Code.

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Respondent made adjustments which corresponded with the federal changes. This resulted in an increase in appellants' California tax liability for the years 1963 and 1965 and a decrease in their liability for 1964. Appellants paid the deficiency assessments for 1963 and 1965. On February 9, 1970, they filed a refund claim for the year 1964, but the claim was disallowed on the ground that it was not timely filed. Respondent's denial of the claim resulted in this appeal.

Insofar as it is relevant here, section 19053 of the Revenue and Taxation Code provides:

No...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,...

It is undisputed that the last day for filing a timely claim for **refund** under the terms of this section was April 15, 1969. However, appellants rely upon other code sections.

Section 19053.3 of the Revenue and Taxation Code provides in part:

The period within which a claim for credit or refund may be filed, ~~or credit~~ or refund **allowed** or made if no claim is filed, shall be the period within which the Franchise Tax Board may mail a notice of proposed additional assessment under the same circumstances, if:

\* \* \*

(b) The taxpayer has agreed with the United States Commissioner of Internal Revenue for an extension (or renewals thereof) of the period for proposing and assessing deficiencies **in federal income tax** for any year. (Emphasis added.)

The period within which the Franchise Tax Board may mail **a notice** of proposed assessment when a **federal**

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extension has been given is set out in section 18587 of the Revenue and Taxation Code as follows:

If any taxpayer agrees with the United States Commissioner of Internal Revenue for an extension or renewals thereof of the period for proposing and assessing deficiencies in federal income taxes for any year, the period for mailing a notice of a proposed deficiency shall be four years after the return was filed or six months after the date of the expiration of the agreed period for assessing deficiencies in the federal income tax, whichever period expires the later.

Under section 18587, the period during which respondent could have proposed an additional assessment for 1964 against appellants was extended to June 30, 1969, six months after the expiration of the federal waiver. Consequently, the period within which a claim for refund could be timely filed also expired on June 30, 1969. Appellants did not file their claim for refund until February 9, 1970, a date well beyond the limitation period provided by section 19053 as extended in section 19053.3.

Appellants argue that under section 18586.2 of the Revenue and Taxation Code the period during which they may file a claim for refund has been extended beyond the June 30, 1969, expiration date. Section 18586.2 provides:

If a taxpayer shall fail to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or shall fail to file an amended return as required by Section 18451, a notice of proposed deficiency assessment resulting from such adjustment may be mailed to the taxpayer within four years after said change, correction or amended return is reported to or filed with the Federal Government.

Appellants assert that because the period within which a claim for refund can be filed under section 19053.3 is "the period within which the Franchise Tax Board may issue a notice of proposed additional assessment under the same circumstances", the failure to report a federal change under section 18586.2 will also keep the statute open for the filing of a claim for refund.

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We disagree. The failure of a taxpayer to report a change or correction by the Commissioner of Internal Revenue is not one of the events described in either of the subsections following the word "if" in section 19053.3. It is clear, therefore, that a taxpayer's failure to report a change was not intended to trigger the application of that section. The act of agreeing with the Commissioner for an extension carries with it the substituted statute of limitations contained in section 18587, supra. The occurrence of a change or correction, however, carries with it the different set of limitations provided in section 18586.2. There is no language in either of the sections suggesting that they are even remotely related to one another.

Our interpretation of the statutes is in accord with previous decisions of this board. (Appeal of Textron, Inc., Cal.- St. Bd. of Equal., Jan. 3, 1967; Appeal of Daniel Gallagher Teaming, Mercantile & Realty Co., Cal. St. Bd. of Equal., June 18, 1963. For the reasons stated in this opinion, we **conclude** that the action of the Franchise Tax Board in this matter must be sustained.

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,

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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 Francis L. and Carole A. Carrington for refund of personal income tax in the amount of \$529.96 for the year 1964, be and the same is hereby sustained.

Done at Sacramento, California, this 15th day of February, 1972, by the State Board of Equalization.

John W. Lynch, Chairman

Geo. Speer, Member

William B. Bernard, Member

William B. Bernard, Member

\_\_\_\_\_, Member

ATTEST: W. W. Newtop, Secretary