BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
VALLEY HOME FURNITURE)

Appearances:

For Appellant: B. D. Laramy
President

For Respondent: James P. 'Corn
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 Valley Home Furniture for refund of franchise tax in the amounts of $591.41 and $231.69 for the income years ended April 30, 1960 and April 30, 1961, respectively,

The only issue raised is whether appellant's claims for refund are barred by the statute of limitations.

Appellant; a California corporation, was formed in 1956 to engage in the retail furniture business, In 1959 Mr. B. D. Laramy agreed to purchase all of appellant's stock and to take over management of the business. s. Under the terms of the stock purchase agreement, Mr. Laramy received from appellant two nonnegotiable promissory notes in the amounts of $12,235.45 and $5,650.17. The larger note was received on or about May 1, 1960, and the smaller one on or about May 1, 1961. Both notes were payable in 1964. Appellant was on the accrual basis of accounting, and it deducted the amount of the notes as salary expense on its franchise tax returns for the income years ended April 30, 1960, and April 30, 1961. Mr. Laramy did not report the amount of the notes in income on his return for

any year. The stock purchase transaction was completed in 1961, at which time the stock was transferred to Mr. Laramy, On September 30, 1961, he cancelled the promissory notes..

In 1963 the Internal Revenue Service disallowed, for federal income tax purposes, the salary expense deductions attributable to the notes appellant issued to Mr. Laramy. This action was based on appellant's failure to pay the salary within 2½ months after the end of the respective taxable years for which the notes had been issued. The Service also determined that the full amount of both notes was includible in Mr. Laramy's income for 1961. Appellant and Mr. Laramy both contested the federal action, and the issues were finally resolved in consolidated proceedings before the U.S. Tax Court. (See Behlmer D. Laramy, T.C. Memo,, June 28, 1966.)

On February 27, 1964, respondent issued proposed assessments of additional franchise tax against appellant for the years on appeal. These proposed assessments were based entirely on the federal determinations, Appellant expressly declined to contest the salary expense disallowance , and it paid the resulting additional tax on April 24, 1964. Appellant elected not to contest the state action because it was already litigating the federal determination on which the state action was based.

When the Tax Court rendered its decision in 1966, it held that appellant was entitled to the salary expense deduction that had been disallowed by the Internal Revenue Service. The Tax Court also held that Mr. Laramy had constructively received the notes as income in the years when they were issued. The decision of the Tax Court became final on March 8, 1967, but the results of that decision were not reported to respondent by either appellant or Mr. Laramy. -Respondent learned of the decision in 1970 and immediately issued proposed assessments of additional personal income tax against Mr. Laramy and his wife, based on the constructive receipt finding of the Tax Court. The Laramys paid the assessments and, on October 16, 1970, appellant filed claims for refund of the additional franchise tax it had paid in 1964 when respondent had denied the salary expense deductions. Respondent denied these refund claims because they were not timely filed,

The applicable statute of limitations is contained in Revenue and Taxation Code section 26073. That section 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 such period a claim therefor is filed by the taxpayer,. ..

Under the clear terms of this statute, the latest day for filing the refund claims here in issue was April 24, 1965, (one year from the date of the overpayment on April 24, 1965). Since appellant's refund claims were not filed until more than five years after that date, they are barred by the operation of section 26073.

Appellant contends that it is grossly unfair to deny its refund claims when the state is able to assess the Laramys (appellant's owners and principal officers) for additional taxes four years after the Tax Court decision. The assessment against the Laramys was, of course, made under a provision of the Personal Income Tax Law (Rev, & Tax. Code, §18586.2) which does not apply to claims for refund of corporate franchise tax. Respondent was able to assess the Laramys when it did because they failed to report the Tax Court action to respondent.

The statute of limitations on appellant's refund claims , however, did not depend at all on the Tax Court decision, The statute began to run when. appellant paid the additional taxes in 1964. Even under the most recent change in the law (Rev. and Tax. Code, §26073b, added in 1969), which is not here applicable, action by the Tax Court does not affect the statute of limitations for refund claims unless the taxpayer. reports the results of that action to the Franchise Tax Board. As we noted earlier, however , appellant did not notify respondent of the Tax Court decision.

Under the law here applicable, appellant could easily have filed protective claims for refund pending the outcome of the federal litigation, (See Appeal of Maurice and Carol B. Hyman, Cal. St. Bd. of Equal., Feb. 26, 1969.) It did not do so. If there is any unfairness to taxpayers in this statutory scheme, the remedy must derive from the Legislature rather than from this board. (See Appeal of Textron, Inc. , Cal. St, Bd. of Equal., Jan. 3, 1967.)

Appeal of Valley Home Furniture

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 Valley Home Furniture for refund of franchise tax in the amounts of $591.41 and $231.69 for the income years ended April 30, 1960 and April 30, 1961, respectively., be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of July, 1972, by the State Board of Equalization.

_____, Chairman

_____, Member

_____, Member

_____, Member

_____, Member

ATTEST: _____, Secretary