



BEFORE THE *STATE* BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HOWARD A. GEBLER)

For Appellant: Howard A. Gebler,
in pro. per.
For Respondent: **Mark McEvilly**
Counsel

O P I N I O N

This appeal is made pursuant to section 19057,
subdivision (a), of the Revenue and Taxation Code from
the action of the Franchise Tax Board in denying the
claim of Howard A. Gebler for refund of personal income
tax in the amount of \$999.22 for the year 1971.

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Appellant, an attorney at law, filed a joint **1971 California personal** income tax return with his spouse. In 1977 respondent Franchise Tax Board received a federal audit report reflecting -adjustments to appellant's reported federal taxable income for 1971. On September 23, 1977, respondent issued a deficiency assessment against appellant which applied the federal adjustments to the taxable income reported on his 1971 state return. Early in 1978, a revised notice of assessment was issued in accordance **with information** furnished by appellant's **representative**. This later assessment became final on March 3, 1978, and appellant paid it in full shortly thereafter. Subsequently, appellant filed a **timely** claim for refund on the ground that the assessment had been barred by the **statute** of limitations. Whether that contention is correct **is the only issue we must resolve.**

The basic statute of limitations for deficiency assessments is set forth in Revenue and Taxation Code section **18586**, which states in pertinent part: "[E]xcept as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years **after the** return was filed. . . ." One of the circumstances which extends the basic four-year limitations **period is** the taxpayer's failure to report a federal change in his taxable income. In such **cases**, Revenue and **Taxation -- Code 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, **correc-**tion or amended return is reported to or filed with the Federal Government.

Section 18451 requires that a taxpayer report-such a change **or** correction to the Franchise Tax Board within 90 days after the federal determination becomes **final.**

It is clear and undisputed that appellant never **reported** the federal adjustments to respondent. Respondent learned of them only because of its **exchange** of information agreement **with the** Internal Revenue

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Service. Under section 18586.2, therefore, respondent had four years from the date the federal changes became final in which to assess a deficiency against appellant. (Appeal of David B. and Delores Y. Gibson, Cal. St. Bd. of Equal., April 22, 1975.) Since the federal audit report was dated May 6, 1976, and became final sometime thereafter, respondent's power to issue an assessment expired no earlier than May 6, 1980. Consequently, the deficiency it issued on September 23, 1977, was timely.

Appellant contends, however, that the basic four-year statute of limitations in section 18586 had already expired (on April 15, 1976) before section 18586.2 could come into operation, and that the latter cannot extend, or revive, a limitations period that has already lapsed. We do not agree.

Under appellant's interpretation of these statutes, respondent would not be able to issue an assessment based on federal action unless that action became final within four years after the taxpayer had filed his state return. The practical effect of this rule would be to prevent respondent's use of final federal determinations almost any time the taxpayer chooses to avail himself of his rights to administrative review within the Internal Revenue Service or to litigate his federal tax liability in the federal court system. We do not believe that our Legislature intended to give such preferential treatment to litigious taxpayers or to place such a premium on speedy action by federal authorities. On the contrary, as we indicated in the Appeal of David B. and Delores Y. Gibson, supra, we think the Legislature intended for respondent to make use of federal determinations whenever they become available; Accordingly, we reject the suggestion that federal audit changes are useless in the administration of the Personal Income Tax Law unless they are finalized during the basic four-year limitations-period contained in section 18586.

For the reasons expressed above, respondent's action in this case will be sustained.

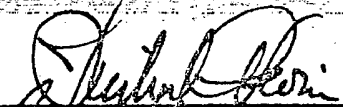
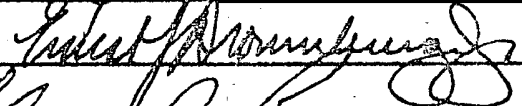
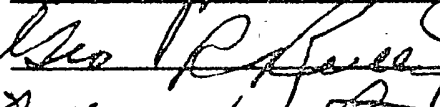
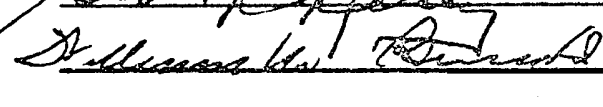
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O R D E R

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 Howard A. Gebler for refund of personal income tax in the amount of \$999.22 for the year 1971, be and the same is hereby sustained.

Done at Sacramento, California, this 18th day of August, 1980, by the State Board of Equalization.

	,	Chairman
	,	Member
	,	Member
	,	Member
_____	,	Member