

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JULES COWAN)

For Appellant: Jules Cowan,
in pro. per.

For Respondent: John A. **Stilwell**, Jr.
Counse 1

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 Jules Cowan for refund **of** personal income tax in the amount of **\$4,000.00** for the year 1966.

Appeal of Jules Cowan

'The sole issue for determination is whether appellant filed a timely claim for refund.

Appellant is an accountant. His 1966 federal income tax return was audited by the Internal Revenue Service resulting in a substantial deficiency. After receiving a copy of the federal audit report, respondent was unable to locate any state income tax return from appellant for 1966. Thereafter, respondent issued a notice of proposed assessment reflecting the federal adjustments. Respondent also assessed penalties for failure to file a return, failure to provide information requested, and negligence. Appellant did not protest the assessment and it became final. Appellant's final payment on the 1966 tax liability was made on March 2, 1977. On June 23, 1978, respondent **received a claim** for refund from appellant in the amount of **\$4,000.00. The claim was denied and this appeal followed.**

Section 19053 of the Revenue and Taxation Code, which prescribes the mandatory time frame for filing a claim for refund, states:

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**

The last date for-filing appellant's 1966 return was **April 15, 1967**. The last payment date was March 2, 1977. Therefore, the last date on which appellant could have filed a timely claim for refund was **March 2, 1978**, one year from the date of the last payment on the tax liability for that year. Since appellant's claim was not filed until **June 23, 1978**, it was untimely.

The statute of limitations governing the filing of a claim for refund is strictly construed. A taxpayer's failure to file a **claim** within the statutory filing period, for whatever reason, bars him from doing **so** at a **later** date. (Appeal of Michael and Antha L. Avril, Cal. St. Bd. of Equal., Aug. 15, 1978.) Accordingly, respondent's action in denying appellant's untimely claim for refund must be **sustained**.

Appeal of Jules Cowan

ORDER

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 Jules Cowan for refund of personal income tax in the amount of **\$4,000.00** for the year 1966, be and the same is hereby sustained.

Done at Sacramento, California, this 23rd day of June, 1981, by the State Board of Equalization, with Board ~~Members~~ Mr. Dronenburg, Mr. Reilly, Mr. Bennett and Mr. Nevins present.

Ernest J. Dronenburg, Jr. - -, Chairman

George R. Reilly _____, Member

William M. Bennett - - -, Member

Richard Nevins, Member

_____, Member