



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
STEPHANIE M. KENNEDY)

For Appellant: Stephanie M. Kennedy,
in pro. per.

For Respondent: John R. Akin
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 Stephanie M. Kennedy for refund of personal income tax in the amount of \$394.00 for the year 1975.

Appeal of Stephanie M. Kennedy

The question presented is whether appellant's claim for refund is barred by the statute of limitations.

In April of **1976**, appellant requested and was granted an extension of time to June **15, 1976**, for filing her 1975 personal income tax return. She did not file her return, however, until May of **1980**. The return indicated a tax liability of **\$8.00** and reflected state income tax withholding of **\$402.00**. Accordingly, appellant requested a refund of **\$394.00**. Respondent denied her refund claim, however, on the ground that it had not been filed within four years after April **15, 1976**, the original due date of her return.

Revenue and Taxation Code section **19053** provides, in pertinent part:

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.)

Respondent contends that "the last day prescribed for filing the return" in this case was the original statutory due date of April 15, 1976, rather than the extended due date of June 15, 1976. We disagree.

In 1941, respondent's predecessor, the Franchise Tax Commissioner, requested the opinion of the Attorney General on the general question of whether the last day "prescribed for filing" returns under the laws administered by the Commissioner means the last day on which a return should have been filed if an extension had not been granted, or the last day of the extended period where the Commissioner had granted an extension for filing the return. The Attorney General concluded that the last day "prescribed" for filing returns, where an extension has been granted, is the last day of the extended period, and the text of the opinion indicates that this conclusion coincided with the Commissioner's own view of the matter at that time. (Cal. Atty. Gen., Op. NS-3772, Sept. '11, 1941.)

We have not found any indication that the Commissioner or respondent failed to follow the Attorney

Appeal of Stephanie M. Kennedy

General's opinion in subsequent years. In 1959, however, the Legislature overrode this interpretation of the law by adding to section 18588 of the Personal Income Tax Law a sentence which read:

For purposes of this section and section 19053, the last day prescribed for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer and without regard to any election to pay the tax in installments. (Emphasis added.) (Stats. 1959, ch. 414, p. 2354.)

This language had a short statutory life, however, since the above quoted sentence was repealed in 1961. (Stats. 1961, ch. 500, p. 1604.)

A cardinal rule of statutory construction is that the amendment of a prior act demonstrates the Legislature's intent to change the pre-existing law. (Eu v. Chacon, 16 Cal.3d 465, 470 [128 Cal.Rptr. 1, 546 P.2d 289] (1976); Clements v. T. R. Bechtel Co., 43 Cal. 2d 227, 232 [273 P.2d 5] (1954).) From the events described above, we can only conclude that the Legislature's action in 1961 restored the law to where it was between 1941 and 1959. Therefore, in accordance with the Attorney General's opinion, we hold that the "last day prescribed for filing the return," for purposes of section 19053, is the last day of the extended period when respondent grants an extension of time to file. Since appellant claimed a refund within four years from June 15, 1976, her claim is not barred by the statute of limitations.

For the above reasons, respondent's action in this matter will be reversed.

Appeal of Stephanie M. Kennedy

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 Stephanie M. Kennedy for refund of personal income tax in the amount of **\$394.00** for the year 1975, be and the same is hereby reversed.

Done at Sacramento, California, this 3rd day of March, 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, Mr. Nevins and Mr. Cory present.

William M. Bennett, Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr., Member

Richard Nevins, Member

Kenneth Cory, Member