

Appeal of Robert B. and DeVonne B. Marien

The sole issue presented by this appeal is whether appellants' claim for refund is barred by the statute of limitations set forth in section 19053 of the Revenue and Taxation Code.

Appellants filed the subject claim for refund on February 3, 1981. On **April 24, 1981**, respondent issued a notice of action notifying appellants that their claim for refund for 1975 had not been filed within the period prescribed by section 19053 and that, consequently, it was barred by the statute of limitations. Respondent's determination has resulted in this appeal.

In pertinent **part**, section-19053 provides as follows:

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

Respondent contends that the above quoted language of section 19053 is mandatory and that under its express terms the latest date on which appellants could have timely filed their claim for refund was April 15, -1980, i.e., four years from the last day prescribed for the filing of their 1975 return. Appellants, while acknowledging that their claim for refund was not filed within the period set forth in section 19053, argue that respondent's denial of their claim is unfair because they had misplaced their **records** for 1975 and that they found those records only shortly before the subject claim for refund was filed.

In numerous prior appeals we have had occasion to deal with the issue presented by this appeal. (See, e.g., Appeal of Wendell Jenkins, Sr., Cal. St. Bd. of Equal., June 23, 1981; Appeal of Manuel and Ofelia C. Cervantes, Cal. St. Bd. of Equal., Aug. 1, 1974; Appeal of Estate of James A. Craig, Deceased, and Viola F. Craig, Cal. St. Bd. of Equal., July, 1967.) In conformity with the interpretation given to comparable federal law, we have consistently held that the statute of limitations set forth in section 19053 must be strictly construed and that a taxpayer's failure, for whatever reason; to file a claim for refund within the statutory period bars him from doing so at a later date. There is no **basis upon** which to reach a different conclusion in the instant appeal.

Appeal of Robert B. and DeVonne B. Marien

For the reasons set forth above, respondent's action in this matter will be sustained.

Appeal of Robert B. and DeVonne B. Marien

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 Robert B. and **DeVonne** B. Marien for refund of personal **income** tax in the amount of **\$308.00** for the year 1975, be and **the** same is hereby sustained.

Done at Sacramento, California, this **14th** day of October **, 1982**, by the State Board of **Equalization**, with Board **Members** Mr. **Bennett**, Mr. Collis, Mr. **Dronenburg** and Mr. Nevins present.

William M. Bennett, C h a i r m a n
Conway H. Collis _____, Member
Ernest J. Dronenburg, Jr. _____, Member
Richard Nevins- _____, Member
_____, Member