



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LEO AND HILDA HOROWITZ)

Appearances:

For Appellants: Leo Horowitz,
in pro. per.

For Respondent: Gary M. Jerrit
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and- Taxation Code from the action of the Franchise Tax Board on the protest of Leo and Hilda Horowitz against a proposed assessment of additional personal income tax in the amount of \$89.67 for the year 1972.

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Appellants filed their 1972 joint California personal income tax return on or about April 15, 1973. On January 23, 1975, respondent received a report from the Internal Revenue Service indicating certain audit **changes** relative to appellants' federal income tax liability for the year in issue. On the basis of the federal adjustments, respondent issued a Notice of Additional Tax Proposed to be Assessed on April 2, 1975; the proposed assessment was **sub-**sequently revised in accordance with certain revisions made by the Internal Revenue Service.

Appellants protested the proposed assessment on the grounds that they were contesting the federal **adjust-**ments in the United States Tax Court: respondent deferred further action pending the **outcome** of the federal proceed-ings. Despite its repeated requests, appellants did not inform respondent as to the status of the federal proceed-ings. Pursuant to its own efforts, however, respondent received a copy of the tax court decision, as well as the final adjustments to appellants' 1972 federal income tax liability, on March 19, 1979. The **information** received by respondent revealed that the tax court's determination concerning appellants' 1972 federal income tax liability had been entered on July 7, 1975. On May 8, 1979, respondent issued appellants a notice of action relative to their protest against the proposed **assessment**, as determined with reference to the final federal determination as to their tax **liability**. Shortly thereafter, appellants appealed on the basis that respondent's action was barred by the statute of limitations. The resolution of appellants' **argument** is the sole issue presented by this appeal.

The basic statute of limitations for deficiency assessments is found in section 18586 of the Revenue and Taxation Code, which provides:

Except in case of a fraudulent return and except 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. No defi-
ciency shall be **assessed** or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise fixed. (Emphasis added.)

As previously noted, appellants' 1972 California return was filed on or about April 15, 1973, and respondent

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issued its proposed assessment on April 2, 1975. Since the proposed assessment was issued by respondent within four years of the date on which appellants filed their 1972 California return, respondent's action in **this** matter- is not barred by the statute of limitations. It should be noted, moreover, that since the final federal determination of the adjustments to appellants' 1972 federal income tax liability was not issued until July 7, 1975, respondent was not limited by the four-year statute of limitations set forth in section 18586. (Rev. & Tax. Code, §§ 18586.2 and 18586.3; see also Appeal of Robert G. and Jean C. Smith, Cal. St. Bd. of Equal., Oct. 27, 1981.)

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

