

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
RAYMOND D. AND ADELAIDE L. PRESLEY)
ABRAHAM J. AND LUZ S. RODRIGUEZ)

Appearances :

For Appellant: Lester J. Marston
Charles Scott
Attorneys at Law

For Respondent: Claudia K. Land
C o u n s e l

OPINION

These appeals are made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Raymond D. and Adelaide L. Presley, and Abraham J. and Luz S. Rodriguez for refunds of personal income tax in the amounts and for the years as follows:

**Appeals of Raymond D. and Adelaide L. Presley
and Abraham J. and Luz S. Rodriguez**

Presley:

<u>Year</u>	<u>Amount Claimed</u>	<u>Amount Allowed</u>	<u>Amount Denied</u>
1971	\$353.00	\$ 0	\$353.00
1972	403.00	235.03	167.97
1973	350.00	239.94	110.06
1974	458.00	272.00	186.00
1975	580.00	337.78	242.22

Rodriguez:

<u>Year</u>	<u>Amount Claimed</u>	<u>Amount Allowed</u>	<u>Amount Denied</u>
1965	\$28.50	\$ 0	\$28.50
1972	3.52	0	3.52

Adelaide L. Presley is an enrolled member of the Morongo Tribe and resides with her non-Indian husband, Raymond D. Presley, on the Morongo Reservation. All of her income was derived from the reservation, while he was employed outside of the reservation. They filed joint personal income tax returns for the years 1971 through 1975. On March 24, 1977, the Presleys filed claims for refund of taxes paid on that portion of their combined income attributable to Mrs. Presley's exempt reservation-derived income. Respondent, applying community property law, initially allowed the refund with respect to one-half of Mrs. Presley's reservation-derived income for the years 1972 through 1975, but concluded that the statute of limitations barred the claim for 1971. Respondent now concedes that the application of community property laws will not permit California to tax one-half of Mrs. Presley's reservation-derived income.

Abraham J. Rodriguez is an enrolled member of the La Jolla Tribe and resides with his wife, Luz S. Rodriguez, on the Rincon Reservation. All of his income was derived from the reservation. In July 1977, the Rodriguezes filed a claim for refund for the state income taxes which they paid. On August 6, 1977, respondent notified them that it would authorize a refund of the income tax paid by Mr. Rodriguez for the years 1973-1975; however, "the claims for the years 1965 and 1972 were denied as untimely."

In March of 1973, the Supreme Court of the United States, in McClanahan v. Arizona Tax Commission, 411 U.S. 164 [36 L.Ed.2d 129] (1973), held that income which was derived wholly from the reservation by a reservation Indian was not taxable by the state. Subsequently, in response to an inquiry by Mrs. Presley, an employee of the respondent allegedly told her that the McClanahan decision did not apply to

Appeals of Raymond D. and Adelaide L. Presley
and Abraham J. and Luz S. Rodriguez

Indians residing here because California was a Public Law 280 state. The Presleys urge that this caused them not to file claims for refund for state income taxes until March of 1977, when Mrs. Presley became apprised of the United States Supreme Court decision in Bryan v. Itasca County, 426 U.S. 373 [48 L.Ed.2d 710] (1976), which held that Public Law 280 was not a grant of power to the states to tax reservation Indians.

In urging that the statute of limitations provided by section 19053 of the Revenue and Taxation Code does not bar their claims, appellants made several arguments and cited various court decisions. They, for example, rely on Ward v. Love County, 253 U.S. 17 [64 L.Ed. 751] (1920) and Carpenter v. Shaw, 280 U.S. 363 [74 L.Ed. 478] (1929), in which the United States Supreme Court held that Oklahoma counties must refund property taxes imposed and collected on Indians' non taxable real property notwithstanding Oklahoma's statute of limitations had run before the Indians had filed their claims for refund of property tax. The holdings in these cases, however, are not precisely in point. Ward simply decided that the absence of a specific statutory authorization empowering the county to refund mistaken tax payments was not sufficient to bar refund of taxes which have been coercively collected by the county from the taxpayers. The U.S. Supreme Court explicitly avoided deciding whether a statute of limitations might effectively apply to such a claim for the return of taxes not due. Carpenter decided that an Oklahoma statute which prohibits suits for refund of taxes paid after the due date was in violation of the 14th amendment of the United States Constitution.

Appellants have cited cases holding that the principles of equity would not permit the trustee United States to assert a statute of limitations to avoid refunding taxes which the United States had improperly imposed on its own wards. (Nash v. Wiseman, 227 F.Supp. 552 (W.D. Okla. 1963); Daney v. United States, 247 F.Supp. 533 (D. Kan. 1965); Dodge v. United States, 362 F.2d 810 (Ct. Cl. 1966).) Needless to say, California does not have a relationship with its Indian residents comparable to that of the United States.

Appellants point out that state statutes of limitation have no application to the United States when it is suing to protect interests of its Indian wards, (United States v. Minnesota, 270 U.S. 181 [70 L.Ed. 539] (1926), United States v. 7,405.3 Acres of Land, 97 F.2d 417 (4th Cir. 1938). and that the federal instrumentality theory has been extended to individual Indians to allow them an exception to 28 USC § 1341 when the United States could have been co-plaintiff in their suit to protect its Indian wards' property from taxation. (Moses v. Kinnear, 490 F.2d 21 (9th Cir. 1974).)

**Appeals of Raymond D. and Adelaide L. Presley
and Abraham J. and Luz S. Rodriguez**

The authorities appear, however, not to have accorded individual Indians' claims for refund of taxes the complete immunity of the United States from state statutes of limitation, which appellants seek here. The theory that the United States is directly interested in sales and use taxes illegally collected from individual Indians and so would be a real party in interest when suing to recover those taxes upon their behalf has been recently and flatly rejected. (Standing Rock Sioux Indian Tribe v. Dorgan, 505 F.2d 1135 (8th Cir. 1974).) By the same token, there is no reason to suppose that the United States would be directly interested in personal income taxes illegally collected from individual Indians.

The appellants maintain also that Javor v. State Board of Equalization, 12 Cal.3d 252 790 [117 Cal.Rptr. 3053 (1974)], and Javor v. State Board of Equalization, 73 Cal.App.3d 939 [141 Cal.Rptr. 226] (1977) constitute authority for the proposition that the state, as a constructive trustee of taxes it has received but which were not due, may not interpose a statute of limitations to bar its refund of those overpayments to the taxpayers. The second Javor case held, inter alia, that until the Supreme Court had tailored a judicial remedy for the plaintiff-consumers, those plaintiffs' rights were not yet litigable and, therefore, plaintiff-consumers could not be faulted for being tardy nor for presenting a stale and untimely claim. In short, the statute of limitations could not run when the plaintiffs' remedy had not existed. The present case is clearly distinguished because a remedy existed under the California Personal Income Tax Law.

Finally, appellants Raymond D. and Adelaide L. Presley contend that respondent is equitably estopped from invoking the statute of limitations to bar their claims. This contention is based upon the allegation that they did not file timely claims for refund because Mrs. Presley was told by respondent's employee that California was a Public Law 280 state and her reservation income was taxable.

The doctrine of equitable estoppel provides that a person may not deny the existence of a state of facts if he intentionally led another to believe a particular circumstance to be true and to rely upon such belief to his detriment. (Strong v. County of Santa Cruz, 15 Cal.3d 720 [125 Cal.Rptr. 896] (1975).) Here Mr. and Mrs. Presley have not established the existence of the required elements and, therefore, the doctrine of equitable estoppel is not applicable.

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1