

# BEFORE THE STATE BOARD OF EQUALIZATION OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )
KENNETH URHEIM

For Appellant: Dennis T. Kira

Dennis T. Kira and Associates.

For Respondent: Terry L. Collins

Counsel

## <u>OPINION</u>

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 claims of Kenneth Urheim for refund of personal income tax in the amounts of \$594.00 and \$595.00 for the years 1975 and 1976, respectively.

#### Appeal of Kenneth Urheim

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

Appellant filed his California **personal** income **tax** returns for the years 1975 and 1976 on July 24, 1981. On those returns, appellant claimed that the total of his withholding and renter's **credits** exceeded his tax liability by **\$594.00** and \$595.00 for the years in issue, respectively, **and** requested refunds in those amounts. Respondent subsequently notified appellant that his claims for refund had not been filed within the period prescribed by section 19053 of the Revenue and Taxation Code and that, consequently, they were barred by the statute of limitations. Appellant 's protest of 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 clear terms the latest dates on which appellant could have filed the subject claims for refund were April 15. 1980 and April 15,' 1981, i.e., four-years from the last day prescribed for the filing of his 1975 and 1976 returns, respectively. Appellant. while acknowledging that his claims .for refund were not filed within the period set forth in section 19053, argues that respondent's denial of his claims is unjust under the circumstances because there existed "reasonable cause" for his failure to file his refund claims in a Specifically, appellant asserts that he acted in timely manner. reliance upon his tax preparer, who misrepresented himself as an and certified public accountant, and who allegedly told attornev that there was no need to file his returns before any appellant specified date.

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.) 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 reason to reach a different conclusion in the instant appeal.

# Appeal of Kenneth Urheim

### 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 Tazation Code, that the action of the Franchise Taz Board in denying the claims of Kenneth Urheim for refund of personal income tax in the amounts of \$594.00 and \$595.00 for the years 1975 and 1976, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 3rd day of January, 1933, by the State Board of **Equalization**, with Board Members Mr. Bennett, Mr, Dronenburg and Mr. **Nevins** present.

William	Μ.	Bennett		Chairman
Ernest	J.	Dronenburg,	Jr.	• Member
Richard Nevins				, Member
				Member
				Member