

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
IVAN R. AND R. B. MORTENSEN)

For Appellants: Ivan R. Mortensen,
in pro. per.

For Respondent: Elleene A. Kirkland
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 Ivan R. and R. B. Mortensen for refund of personal income tax in the amount of \$507.62 for the year 1975.

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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 left California in October 1975. While they believed that their withholding credits exceeded the amount of their tax liability for the year in issue, they made only **"two** admittedly cursory **attempts"** to have resident acquaintances obtain the needed forms to file a personal income tax return. Appellants returned to California in 1979, and filed their 1975 return on February 12, 1982, shortly after appellant-husband obtained another copy of his Wage and Tax Statement for the appeal year. On their return, appellants claimed that **the total** of their withholding and renter's credits exceeded their tax liability by \$507.62, and requested a refund in that amount. Respondent subsequently notified appellants that their claim for refund had not been filed within the period prescribed by section 19053 of the Revenue and Taxation Code and that, consequently, it was barred by the statute of limitations. Appellants' disagreement with **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** 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 date on which **appellants** could have filed the -subject 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 unjust under the **circumstances because** appellant-husband encountered delays in obtaining the forms needed to file the return. Moreover, appellants claim that the relevant law is inequitable in that it provides for the disallowance of untimely filed refund **claims while respondent is not**

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similarly constrained in its issuance of deficiency assessments.

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, 1984; 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. Finally, we note that appellants are incorrect in contending that, there **exists no** statute of limitations with **respect** to respondent's issuance of deficiency assessments. Revenue and Taxation Code section **18586** provides, in pertinent part, as follows:

Except in case of a fraudulent return
. . . . every notice of a proposed deficiency
assessment shall be **mailed to** the taxpayer
within four years after the return was filed.
No deficiency 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

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

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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 Ivan R. and R. B. Mortensen for refund of personal income tax in the amount of \$507.62 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 5th day of April, 1983, by the State Board of Equalization, with Board **Members** Mr. Bennett, Mr. Collis, Mr. Dronenburg, Mr. Nevins and Mr. Harvey present.

<u>William M. Bennett</u>	, Chairman
<u>Conway H. Collis</u>	, Member
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Richard Nevins</u>	, Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code Section 7.9