

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LYRIC Y. ROBINSON)

Appearances:

For Appellant: Paul Sapoznik

For Respondent: Charlotte A. Meisel
Counsel

OP IN-ION

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 Lyric Y. Robinson for refund of personal income tax in the amount of \$117 for the year 1976.

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The question presented in this appeal is whether appellant's claim for refund is barred by the statute of limitations.

Respondent notified appellant that it had no record of her personal income tax return for 1976 and requested that she file. When no response was received, respondent issued a notice of proposed assessment (NPA) based on estimated income. The NPA became final on June 15, 1978. Appellant's wages were attached and her liability for tax, penalties, and interest was finally satisfied on July 9, 1979.

Appellant filed her 1976 return on July 29, 1982, claiming a refund of \$117. Because this claim was filed more than four years after the due date of the return, respondent denied it. Appellant concedes that **the \$117** refund claimed on her return is barred by the statute of limitations, **but** contends that the **\$2,398.36** withheld from her wages in 1979 to satisfy the assessment for 1976 should be refunded. Respondent concedes that appellant's 1976 liability has been satisfied in full and its notice of tax due, dated November 17, 1982, was incorrect.

Revenue and **Taxation Code section** 19053 provides, in pertinent part:

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

Appellant's overpayments, by attachment of her wages, were made in **January**, March, May, and July of 1979. Her 1976 return and the **claim** for refund for the amounts attached were not filed until July 29, 1982. One year from the date of the last overpayment would have been July 1980. Four years from the date prescribed for filing her 1976 return would have been April **1981**. Therefore, her claim was not filed within either limitation period set by the statute.

At the hearing on this matter, appellant's representative argued that appellant was unable to handle her affairs at the time her 1976 return was due. Although we are sympathetic to appellant's plight, we do not believe

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that appellant's disability at the time her return was due tolls the statute of limitations for filing a claim for refund. Section **19053** contains no exculpatory provisions and we have consistently held that the statute of limitations for refund claims must be strictly construed. (Appeal of Stanley R. and Cheryl J. Huddleston, Cal. St. Bd. of Equal., Aug. 17, 1982; ~~Appeal of Maurice and Carol B. Hyman~~, Cal. 'St. Bd. of Equal., Feb. 26, 1969.) Respondent's action, therefore, must 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 Lyric Y. Robinson for refund of personal income tax in the amount of \$117 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 17th day of January , 1984, by the State Board of Equalization, -with Board **Members** Mr. Nevins, Mr. Dronenburg and **Mr.** Bennett present.

Richard Nevins , Chairman
Ernest J. Dronenburg, Jr. , **Member**
William M. Bennett , Member
_____, Member
_____, Member