BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
EDWIN G. AND ROSALIE ZALIS)

For Appellants: Sam Klein
Certified Public Accountant

For Respondent: Elleene A. Tessier
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 Edwin G. and Rosalie Zalis for refund of personal income tax in the amount of over $1.00 for the year 1973.

The issue presented is whether appellants' claim for refund is barred by the applicable statute of limitations.

Appellants filed joint California personal income tax returns for 1972, 1973, and 1974. The Internal Revenue Service (IRS) audited their federal returns for those years and made adjustments which ultimately led appellants to file a petition with the United States Tax Court. In conjunction with the federal audit, appellants consented to an extension of time for the IRS to assess deficiencies until December 31, 1978. Appellants failed to notify respondent of the federal audit, 'and respondent did not become aware of appellants' dispute with the IRS until 1979. At that time, respondent informed appellants that, due to the pendency of the federal action, state adjustments would not be issued until the federal adjustments became final.

On February 21, 1980, the federal action was settled by a stipulation of the parties agreeing to deficiency assessments for 1972 and 1974 and an overpayment for 1973. The adjustments resulted from the shifting of partnership income and loss among the three years at issue. Appellants did not notify respondent that the tax court action had been settled. On July 8, 1981, after the IRS notified respondent of the final determination, respondent issued notices of proposed assessment for 1972 and 1974 based upon the final federal adjustment. It did not make the corresponding adjustment for 1973 because it determined that a refund was barred by the applicable statute of limitations. On August 14, 1981, appellants filed a claim for refund which respondent denied, leading to this timely appeal.

Appellants' claim for refund was not timely filed. Section 19053.3 of the Revenue and Taxation Code[1/] provides that if a taxpayer has agreed with the IRS for an extension of the period for assessing deficiencies in federal income tax for any year, the period within which the taxpayer may file a claim for refund for that year is the period within which respondent may mail a notice of

1/ Unless otherwise indicated, all statutory references are to the Revenue and Taxation Code as in effect for the years at issue.

proposed additional assessment under the same circumstances. Under those circumstances, the period within which respondent may mail a notice of proposed assessment is either four years after the return was filed or six months after the expiration of the extension agreement with the IRS, whichever is later. (Rev. & Tax.. Code, § 18587.) In the appeal before us, the six-month period expired later since the extension agreement did not expire until February 21, 1980, when the tax court action was settled. Appellants were therefore required to file their claim for refund within six months of that date, or by August 21, 1980, Since their claim was not filed until August 14, 1981, it was untimely.[2/]

On the other hand, respondent's notices of proposed assessment, issued July 8, 1981, were timely. Initially, respondent was subject to the same statute of limitations as appellant, that is, six months from the final federal determination. (Rev. & Tax. Code, § 18587.) However, section 18586.2 lengthens the statute of limitations applicable to respondent when a taxpayer fails to report an adjustment made by the IRS as required by section 18451 to four years from the date the federal action becomes final. Appellants were required by section 18451 to notify respondent of the settlement of the tax court action and failed to do so; therefore, the statute of limitations applicable to respondent was extended to four years. Appellants' period for filing claims for refund was not similarly extended. (Appeal of Francis L. and Carole A. Carrington, Cal. St. Bd. of Equal., Feb. 15, 1972.) Nevertheless, appellants contend that even though their claim for refund was not timely filed, respondent should be estopped from disallowing the claim,

The doctrine of estoppel is applied against a government agency only when the elements of estoppel are clearly present and when estoppel is needed to prevent serious injustice. (U.S. Fid. & Guar. Co. v. State Bd. of Equal., 47 Cal.2d 384 [303 P.2d 1034] (1956).) The doctrine of estoppel is applicable against the government only when there has been governmental action which

2/ Although the 1973 overpayment in this appeal resulted from a transfer of income and deductions from one year to another, section 19053.9 is inapplicable since the seven-year period from the due date of the 1973 return had expired.

has induced reasonable, detrimental reliance by the party asserting the defense and where the doctrine's use is required to preve-nt severe injustice. (Schuster v. Commissioner, 312 F.2d 311 (9th Cir. 1962); see generally Thompson, Equitable Estoppel of the Government, 79 Colum, L.Rev. 551 (1979).) Since estoppel is an affirmative defense, the person claiming it has the burden of proving the existence of all of the elements of estoppel. (Appeal of U.S. Blockboard Corporation, Cal. St. Bd. of Equal., July 7, 1967.) We believe that appellants have failed to establish that the doctrine of estoppel is clearly applicable in the instant appeal.

Appellants base their estoppel claim upon a letter written by respondent's agent on June 1, 1979, while the tax court action was pending. That letter contained the following language:

> It is the policy of this department to make comparable adjustments to your state return after a federal audit in those areas where state and federal laws are similar. Since the federal adjustments are not final, state adjustments will not be issued pending the decision of the United States Tax Court.

Appellants contend that the above language led them to believe that once the federal action became final, respondent would automatically make all corresponding state adjustments, whether resulting in an increase or decrease of tax, and that it was unnecessary for them to file a claim for refund or take any other action.

While it is possible to interpret the language as appellants contend they did, the language certainly does not specifically state that no further action was required of appellants. This is in sharp contrast to most cases where the doctrine of estoppel has been applied against the government, since in most cases, the misrepresentation was direct and not subject to various interpretations. (See, e.g., Schuster v. Commissioner, supra; Exchange and Savings Bank of Berlin v. United States, 226 F.Supp. 56 (D. Md. 1964), revd. on other grounds, 368 F.2d 334 (4th Cir. 1966); Black v. Bolen, 268 F. 427 (W.D. Okla. 1920), app. dism., 277 F. 1013 (8th Cir. 1921).)

In this appeal, any misrepresentation present occurred by virtue of the omission of information regarding the necessity of appellants filing a refund claim.

Such omission cannot sustain a claim of estoppel since it is not respondent's duty to provide such information. (Appeal of F. D. Shaget, Cal. St. Bd. of Equal., July 26, 1982; see also Bryan, Sr. v. U.S., 40 Am.Fed.Tax R.2d 77-5749 (Ct. Cl. 1977).) In addition, it is questionable whether the government can ever be estopped without having performed an affirmative action. (Schweiker v. Hansen, 450 U.S. 785 [67 L.Ed.2d 685], rehg. den., 451 U.S. 1032 [69 L.Ed.2d 401] (1981).) For the reasons specified above, we believe that the action taken by respondent falls short of the type of governmental action which gives rise to a claim of estoppel.

Appellants' claim also fails because it was not reasonable for them to rely upon the language contained in respondent's letter. Before the doctrine of estoppel is applicable, the taxpayer must establish that his reliance was that of a reasonably prudent man under the circumstances. (Smale & Robinson, Inc. v. United States, 123 F.Supp. 457 (S.D. Cal. 1954).) Reliance is generally unreasonable when the party claiming estoppel knew or could have taken reasonable steps to learn the truth. (United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432, 446 (9th Cir. 1971).) While there may be instances where an inexperienced taxpayer should not be presumed to know the correct application of tax law and where such a taxpayer may reasonably rely upon respondent's agents, this appeal does not present such a situation. Not only were appellants represented by accountants, but the law regarding their duties was clear. The necessity of filing a refund claim within the applicable statute of limitations is well established (Appeal of Beverly J. Waslauk, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Goldie Kahn, Cal. St. Bd. of Equal., April 6, 1978; see also Root v. U.S., 294 F.2d 484 (9th Cir. 1961)), and the requirement that a taxpayer inform respondent when a federal adjustment is finalized is clearly set forth. (Rev. & Tax. Code, § 18451.) Under these circumstances, we conclude that appellants reasonably should have been aware of their statutory duties and that their reliance upon respondent's letter was unreasonable.

For the above reasons, we must sustain respondent's action.

Appeal of Edwin G. and Rosalie Zalis

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 Edwin G. and Rosalie Zalis for refund of personal income tax in the amount of over $1.00 for the year 1973, be and the same is hereby sustained.

Done at Sacramento, California, this 27th day of June, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis and Mr. Bennett present.

Richard Nevins, Chairman

Ernest J. Dronenburg, Jr., Member

Conway H. Collis, Member

William II. Bennett, Member

_____, Member