

Appeal of Robert L. Pickett

Appellant alleged that from 1936 until December 1952, he was one of four minor beneficiaries of his mother's estate which was administered by a court appointed guardian. Appellant further alleged that in January 1953, the guardian was ready to distribute to appellant his share of the estate, worth \$4,000, but respondent failed to issue a timely income tax clearance. According to appellant, respondent's failure to issue the clearance resulted in an 18-month delay in the final distribution of the estate. Appellant asserted that the delay resulted in the loss of \$367.20 in income. Appellant also claimed that he is entitled to interest on that sum from the time distribution was finally made until the time he submitted his claim 17 years later.. The total amount of the claim is \$969.77.

Appellant's claim for refund was submitted at the time he filed his 1970 personal income tax return, Appellant's liability, as shown on the return, was \$174.59 which he did not pay. Rather than pay the amount due appellant asserted his claim for \$969.77 requesting that respondent offset his current income tax liability and refund the balance of \$795.18 which he claimed respondent still owed him. Respondent denied the claim and this appeal followed.

Section 19051 of the Revenue and Taxation Code provides:

If the Franchise Tax Board or the board, as the case may be, finds that there has been an overpayment of tax, penalty, or interest by a taxpayer for any year for any reason, the amount of the overpayment shall be credited against any taxes then due from the taxpayer under this part and the balance refunded to the taxpayer.

As is evident from the language of the statute a refund is authorized only when there has been an overpayment of taxes, penalties or interest. The California Personal Income Tax Law contains no other provision for refunds.

