

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MANUEL AND OFELIA C. CERVANTES }

For Appellants: Manuel Cervantes, in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Kendall Kinyon
Counsel

OPINION

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Manuel and Ofelia C. Cervantes for refund of personal income tax in the amounts of \$43.24 and \$115.70 for the years 1966 and 1967, respectively.

The issue for our determination is whether appellants' claims for refund for the years 1966 and 1967 were properly denied by respondent .

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Appellants filed timely joint California income tax returns for the years 1966 and 1967. They overpaid their taxes for both of those years (as they allegedly did for all years between 1958 and 1971) by adding withholding tax to their gross income and then computing their tax liability on that amount. On February 15, 1973, respondent received claims for refund from appellants for the years 1966 through 1971. It granted the claims for the years 1968 through 1971, but denied the claims for 1966 and 1967 on grounds that these claims were barred by the statute of limitations contained in section 19053 of the California Revenue and Taxation Code. That section provides:

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, or unless before the expiration of such period the Franchise Tax Board allows a credit, makes a refund, issues a notice of proposed overpayment, or certifies such overpayment to the State Board of Control for approval of the refunding thereof.

Appellants contend that respondent should have notified them of the overpayments. They also ask that the statute of limitations be disregarded in this case since they have suffered financial hardship as a result of making the same mistake for so many years.

The terms of section 19053 clearly indicate that it is incumbent upon the taxpayer to file a claim for refund within the specified time limits; in this case, by April 15, 1971, with respect to the 1966 tax year, and by April 15, 1972, for their taxable year 1967. There is no duty on the part of respondent to discover taxpayers' overpayments of income tax or to notify them of such overpayments. (See Appeal of Waldemar H. Bendig, Cal. St. Bd. of Equal., Aug, 5, 1968.) Furthermore, in Bendig, supra, we rejected appellant's contention that ill health and permanent disability should operate to toll the running of the statute of limitations. We noted that in view of the mandatory language of section 19053, even these unfortunate circumstances are of

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no help to a taxpayer who has failed to file his claim for refund within the time limits specified.

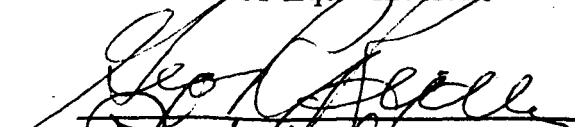
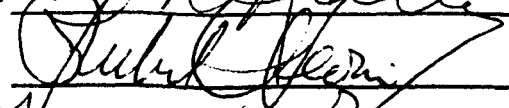

Accordingly, in the instant case, where claims for refund were not filed within the four year statute of limitations, financial hardship, unfortunate though it may be, will not operate to permit the granting of untimely claims. Respondent's determination is sustained.


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 Taxation Code, that the action of the Franchise Tax Board in denying the claims of Manuel and Ofelia C. Cervantes for refund of personal income tax in the amounts of \$43.24 and \$115.70 for the years 1966 and 1967, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of August, 1974, by the State Board of Equalization.

 , Chairman
 , Member
 , Member
_____, Member
_____, Member

ATTEST:  , Secretary