



Appeal of Hans George and Edith Loewenstein

The question presented by this appeal is whether the claim for refund filed by appellants was barred by the statute of limitations.

On March 23, 1968, appellants filed a joint California personal income tax return for the year 1967. In computing their tax liability, appellants erroneously included certain shareholders' undistributed long-term capital gains as ordinary dividend income. Such capital -gains are not subject to tax until actually received.

On March 12, 1973, appellants filed a claim for refund of \$446.00 for the year 1967. This amount represents the elimination of the undistributed capital gains from taxable income. Respondent disallowed appellants' claim for refund on the basis that it was barred by the statute of limitations.

The governing portion of section 19053 of the California Revenue and Taxation Code 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. ...

Under the circumstances, the last date on which appellants could have filed a timely claim for refund of their 1967 tax overpayment was April 15, 1972, four years after the last day prescribed for filing their 1967 return. Appellants do not deny that their claim for refund was not filed within the limitation period. However, they believe that their appeal has merit because of the complexity of the tax laws. They state that the overpayment was discovered by their new accountant in February of 1973.

Ignorance of the law does not excuse the delinquent filing of claims for refund. (Appeal of E. C. and P. M. Braeunig, Cal. St. Bd. of Equal., Feb. 18, 1970.) Further, it has been held that statutes of limitation for filing refund claims must be strictly construed. (Appeal of Cleo V. Mott, Cal. St. Bd. of Equal., Aug. 7, 1963; Appeal of Clarence L. and Lois Morey, Cal. St. Bd. of Equal., Aug. 3, 1965.) Thus, appellants' inadvertent failure to file their claim within the statutory period bars them from doing so at a later date.

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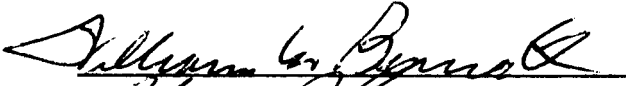
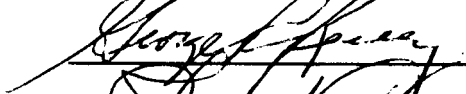

For the above reasons, it is concluded that respondent's action in this matter must be sustained.

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 claim of Hans George and Edith Loewenstein for refund of personal income tax in the amount of \$446.00 for the year 1967, be and the same is hereby sustained.

Done at Sacramento, California, this 22nd day of April, 1975, by the State Board of Equalization.

, Chairman  
, Member  
, Member  
\_\_\_\_\_, Member  
\_\_\_\_\_, Member

ATTEST: , Secretary