BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
JEROME S. AND)
MILDRED C. BRESLER)

Appearances:

For Appellants: Jerome S. Bresler, in pro. per.

For Respondent: Paul J. Petrozzi
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 Jerome S. and Mildred C. Bresler for refund of personal income tax in the amounts of $2,863.00 and $3,050.00 for the years 1965 and 1966, respectively.

We must decide whether appellants' claims for refund are barred by the statute of limitations and, if not, whether appellants were California residents during the years in question.

Jerome Bresler, hereinafter referred to as appellant, is a well-known motion picture producer. For some years prior to 1965, he had thought that his career would best be served by moving to Europe to produce films. When such an opportunity presented itself in 1964 through an agreement with Columbia Pictures Corporation, appellant took advantage of it, and he and his wife departed California for London on February 1, 1965. Appellant's intention at that time was apparently to fulfill a one-year contract to produce one or more pictures for Columbia, but by December 1965 he had firmly decided to remain indefinitely in London. He accordingly formed a United Kingdom corporation, secured office space and rented a house in London, employed British counsel and accountants, established bank accounts, and obtained a three-year work permit from the British government. He did not finally return to California until April 1968.

Appellant owned a home on Bainbridge Avenue in Los Angeles throughout this period. It was occupied by his son from the time appellant left for England until sometime late in 1966. Thereafter, until January 1969, it was leased.

While in England appellant filed resident California income tax retu ms. In August 1'968, respondent-proposed to assess a deficiency against him for 1966 because his return for that year had improperly excluded some foreign-source income. Appellant protested the assessment and also filed claims for refund for 1966 and 1967, contending that he was a nonresident for those years. Appellant was represented by a firm of certified public accountants, and during the negotiations on the protest and refund claims his representative secured an offer to settle the claims from respondent's hearing officer. The terms of the offer are described in a letter written to 'appellant by his representative. The letter states:

> [The hearing officer] indicated that the [Franchise Tax] Board has a number of residency matters before it involving taxpayers in the motion picture industry and that they have taken a strong position of not permitting such persons to exclude their foreign earned income on the basis of non-residency. However, the facts in your case are the most convincing from the taxpayer's standpoint, and his opinion is that the legal staff of the Board would not like to chance losing your case before the Board of Equalization for reason of the possible precedent it may establish. Accordingly, he is prepared to recommend to Sacramento that the Franchise Tax Board concede non-residency for 1967 and the four months in 1968, if taxpayer will concede 1966. His basis for the compromise rests upon your disposition of the Bainbridge residence during your absence from California. (Emphasis in the original.)

The letter also indicates that appellant would receive a net refund of approximately $1,76 2.00 if he accepted the settlement offer. Appellant subsequently did accept the offer, and pursuant to the compromise agreement respondent affirmed its proposed assessment, disallowed the refund claim for 1966, and allowed the claim for 1967.

Appellant states that he agreed to the settlement only because respondent consistently told him, beginning before his departure for England and continuing throughout the settlement negotiations, that he would remain a California resident as long as he owned a home in this state. On February 1, 1974, however, respondent issued a ruling that Richard and Patricia Nixon were not California residents for tax purposes while Mr. Nixon was President of the United States. This decision was made in spite of the fact that the Nixons had substantial contacts with this state, contacts apparently more substantial than appellant's, The Nixons not only owned real property and maintained a home in California,

but also owned a motor vehicle registered in this state, belonged to churches, clubs and social organizations here, and had accounts in California banks. In addition they spent a number of days in California each year, and were registered to vote and actually voted in this state during the years respondent held them to be nonresidents. Appellant learned of this ruling and on February 26, 1974, filed the claims for refund at issue here. His position is that under the views expressed in the Nixon ruling, he should not be considered a resident of this state during the years in question. We do not reach the residency issue, however, because we have concluded that appellant's refund claims are barred by the statute of limitations.

The basic statute of limitations governing refund claims is set forth in Revenue and Taxation Code section 19053,which provides in relevant 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 had received an extension of time in which to file his 1965 return until July 15, 1966,' and the last day for filing a refund claim for that year was thus July 15, 1970. The due date for the 1966 return was April 15, 1967, and the last date for filing a claim for that year was April 15, 1971. Accordingly, the limitations period of section 19053 had passed before the claims in question were submitted. Appellant argues, however, that section 19053 should not bar his claims. He declares that he relied on respondent's alleged representations that homeownership is determinative of residency, and that he would not have assented to the compromise settlement if he had not been thus misled. From this he concludes that respondent should be estopped from raising the statute of limitations on this appeal. We disagree.

As a general rule estoppel will be invoked against the state only where grave injustice would otherwise result. (California Cigarette Concessions v. City of Los Angeles, 53 Cal. 2d 865, 869 [3 Cal. Rptr. 675, 350 P. 2d 715].) In an appropriate case a

government agency may be estopped to rely on the statute of limitations in denying a claim, where erroneous advice given by the agency has induced the claimant to delay filing until after the limitations period has expired. It must appear, however, that the "agency acted in an unconscionable manner or otherwise set out to, or did take unfair advantage of" the claimant. (Driscoll v. City of Los Angeles, 67 Cal. 2d 297, 306 [61 Cal. Rptr. 661, 431 P. 2d 245]; Fredrichsen v. City of Lakewood, 6 Cal. 3d 353, 358 [99 Cal. Rptr. 13, 491 P. 2d 805].) In Fredrichsen the California Supreme Court described as follows the facts to be considered in determining whether an agency's actions are sufficiently culpable to warrant an estoppel:

> ... whether or not the inaccurate advice or information is negligently ascertained, whether or to what extent the agency is certain of the information it dispenses, whether the agency purports to advise and direct or merely to inform and respond to inquiries, whether the agency acts in bad faith, whether the claimant is one who purports to have no knowledge or training which would aid him in determining his rights and the public agency purports to be informed and knowledgeable, whether the right of which claimant is being deprived is significant, and whether a confidential relationship exists between the claimant and the public entity. (6 Cal. 3d at 358.)

While some of these factors may be present here, we have concluded that this is not an appropriate case for estoppel. Even assuming that the statements allegedly made to appellant concerning the import of owning a California home were erroneous, there is nothing in the record to indicate that they were made negligently, in bad faith, or with willful intent to mislead. Moreover, no confidential relationship exists between respondent and appellant. Initially respondent merely replied to inquiries from appellant concerning his status while abroad, and later it entered negotiations with him to settle his tax liability. for the years in question. Appellant was represented throughout by a California

accountant, who presumably was acquainted with California tax law. He was advised by his accountant that he had a relatively strong case for nonresidency, and he was aware that on an appeal to this board we might determine that he was not a California resident while abroad. Appellant chose to forego the risk of such an appeal, and entered instead into a settlement agreement whereby he received a net refund of over $1,700.00. Under these circumstances it cannot be said that respondent took unfair advantage of appellant, or otherwise acted in a manner calling for estoppel. (Fredrichsen v. City of Lakewood, supra; California Cigarette Concessions v. City of Los Angeles, supra.) Accordingly, we must sustain respondent's determination that appellant's refund claims are barred by section 19053.

In the usual case, what we have said abovewould end our inquiry. The issues raised by appellant concerning the Franchise Tax Board's decision in the Nixon case, however, have also been raised directly or indirectly by a number of other taxpayers. It has been suggested that the Nixon ruling serves as a "precedent," and that we should follow the legal theories and conclusions set forth therein when deciding other residency cases, Because of the importance of this issue to the efficient administration of the income tax law, we take this opportunity to express our views on the matter.

It appears to us, after a review of the facts that were disclosed in the Nixon case, that Mr. and Mrs. Nixon were probably California residents for tax purposes during the years 1969 through 1973. In our opinion, the Franchise Tax Board's conclusion to the contrary was based on an analysis that misconstrued and overemphasized one of our prior opinions. Furthermore, in exercising our statutory duty to "hear and determine" appeals from the Franchise Tax Board, we are not bound to follow that agency's determination of any question of law or fact in either the case before us or in any other similar or related case. (Rev. & Tax. Code, § 19451.) Our decision on the merits of any appeal is based solely on our determination of the proper application of the law to the facts involved, in light of the pertinent regulations, judicial decisions, and our own prior decisions. The

Franchise Tax Board's conclusions in the Nixon matter are simply not relevant to that determination. Therefore, since the Franchise Tax Board's decision in the Nixon matter may have been incorrect, and since in any case we are not bound to follow it, we will not accord the Nixon ruling any precedential value whatsoever in other cases coming before this board. (See also the Appeal of John Haring, decided this day.)

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 Jerome S. and Mildred C. Bresler for refund of personal income tax in the amounts of $2,863.00 and $3,050.00 for the years 1965 and 1966, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 19 day of August 1975, by the State Board of Equalization.

John W. Lynch, Chairman

, Member

, Member

, Member

, Member

ATTEST: W. W. Dunlop, Executive Secretary