

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LEWIS AND AURORA LIPTON)

For Appellants: Lewis Lipton, in pro. per.

For Respondent: Bruce W. Walker
 Chief Counsel

Kwan K. Wang
Counsel

OPINION

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Lewis and Aurora Lipton against a proposed assessment of additional personal income tax in the amount of \$235.62 ~~for~~ the year 1969.

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The question presented is whether the proposed assessment was barred by the statute of limitations.

Appellants filed timely federal and state personal income tax returns for the year 1969. In due course the Internal Revenue Service audited their federal return and issued a Statement of Adjustment on September 16, 1974. Appellants failed to notify respondent of the federal adjustment, and on March 7, 1975, respondent issued a notice of proposed assessment for the year 1969 based upon a copy of the federal adjustment which it had received from the Internal Revenue Service. Appellants protested the proposed assessment, urging that it was barred by the statute of limitations. This appeal followed respondent's action in affirming its assessment.

The basic statute of limitations for deficiency assessments is contained in section 18586 of the Revenue and Taxation Code, which provides:

Except in case of a fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise fixed.

One of the circumstances which extends the basic four-year statute of limitations is the taxpayer's failure to report a federal change in his taxable income. In such cases Revenue and Taxation Code section 18586.2 provides:

If a taxpayer shall fail to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority or shall fail to file an

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amended return as required by Section 18451, a notice of proposed deficiency assessment resulting from such adjustment may be mailed to the taxpayer within four years after said change, correction or amended return is reported to or filed with the Federal Government.

Since appellants undisputedly failed to report the final federal changes within the ninety-day period prescribed by section 18451, it follows under section 18586.2 that respondent had four years from the date of those changes in which to assess the deficiency against appellants. (Appeal of David B. and Delores Y. Gibson, Cal. St. Bd. of Equal., April 22, 1975) Obviously respondent's notice of proposed assessment dated March 7, 1975, was within the four-year limitation period which commenced with the federal adjustment on September 16, 1974.

Under the circumstances, we hold that the assessment in question was not barred by the statute of limitations,

ORDER .

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Lewis and Aurora Lipton against a proposed assessment of additional personal income tax in the amount of \$235.62 for the year 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of May, 1976, by the State Board of Equalization,

Halbman, Bernard, Chairman
George E. Perry, Member
Paul J. ..., Member
_____, Member
_____, Member

ATTEST: *W. W. ...*, Executive Secretary