

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KING AND DOROTHY CROSNO, ET AL.)

Appearances:

For Appellants: King Crosno, in pro. per.

For Respondent: Jon Jensen
Counsel

O P I N I O N

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 King and Dorothy Crosno against a proposed assessment of additional personal income tax and penalty in the total amount of \$151.85 for the year 1966, and on the protest of King and Dona M. Crosno against proposed assessments of additional personal income tax and penalties in the total amounts of \$1,899.88, \$1,140.55, \$1,166.98 and \$866.80 for the years 1968, 1969, 1970 and 1971, respectively.

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Two questions are presented for decision:, (1) Whether respondent's notices of proposed assessment were timely mailed, and (2) whether those notices sufficiently stated the basis of the assessments.

Appellants filed their California personal income tax returns for the years in question as follows:

<u>Year</u>	<u>Date Filed</u>
1966	January 5, 1970
1968	May 13, 1971
1969	November 10, 1971 ^{1/}
1970	No return filed
1971	June 14, 1972

In 1974 respondent received federal audit reports concerning appellants' federal income tax liability for those years. On the basis of the federal adjustments, respondent issued notices of proposed assessment (NPA's) of additional personal income tax against appellants. Penalties for delinquent filing were also assessed for 1966 and 1968, as well as negligence penalties for 1968, 1969 and 1970. The NPA for 1971 was mailed to appellants on August 12, 1974, and the NPA's for the remaining appeal years were mailed on November 21, 1974.

Late in 1974 appellants advised respondent that they were contesting the federal assessments for all of the appeal years. Respondent treated appellants' correspondence as a timely protest against its deficiency assessments and deferred further action on the protest pending receipt of the final federal audit adjustments. On or about April 18, 1975, appellants sent respondent copies of the final federal determination with respect to each year. In due course respondent made appropriate adjustments in its original assessments and issued notices of action on November 15, 1976, reflecting those adjustments. This appeal followed.

Appellants do not appear to dispute the amounts of the assessments of additional tax and penalties.

^{1/} Although appellants contend they did file a return for 1970, they have failed to produce evidence to substantiate that claim. We therefore must accept respondent's allegation that no such return was ever filed.

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Rather, they contend **that the** assessments for all years were barred by the statute of limitations. In this regard they argue that respondent's notices of November 15, 1976, were not mailed within four years after the returns for the appeal years were filed, as is required by section 18586 of the Revenue and Taxation Code, nor within six months after appellants' notification to respondent of the final federal audit adjustments, as is required by section 18586.3 of the Revenue and Taxation Code. Appellants also urge that those notices did not comply with the requirements of section 18584 of the Revenue and Taxation Code in that they did not provide any "reasons" for the assessments.

The basic statute of limitations for personal income tax 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 modification of the time period set out above is **provided** in section 18586.3, which allows the issuance of a proposed deficiency assessment based upon federal audit adjustments within six months from the date the taxpayer advises respondent of such adjustments. Where no return has been filed, a proposed deficiency assessment of tax, interest and penalties may be issued by respondent at any time. (Rev. & Tax. Code, § 18648, subd. (a).)

In reviewing appellants' arguments we note an apparent confusion or lack of understanding of the distinction between the notices of proposed assessment (NPA's) issued by respondent on August 12, 1974, and November 21, 1974, on the basis of federal audit reports, and the notices of action issued by respondent on November 15, 1976, after the final federal determination had been reviewed and appropriate adjustments made in the state assessments. For purposes of clarification, we must point out that the only dates which are relevant in determining whether the deficiency assessments were timely are August 12, 1974, and November 21, 1974, the dates on which the NPA's were issued.

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Appellants' 1968, 1969 and 1971 returns were filed on May 13, 1971, November 10, 1971, and June 14, 1972, respectively. Accordingly, under the provisions of section 18586 of the Revenue and Taxation Code respondent could have mailed notices of proposed deficiency assessments for those years as late as May 3, 1975, November 10, 1975, and June 14, 1976, respectively. The NPA's issued on August 12, 1974, for 1971 and on November 21, 1974, for 1968 and 1969, therefore were obviously within the basic limitations period set forth in section 18586.

Since appellants did not file a return for 1970, respondent could assess the amount of tax and penalties due for the year at any time, pursuant to section 18648. (Appeal of Casper W. and Svea Smith, Cal. St. Bd. of Equal., April 5, 1976.) That being so, the NPA for 1970 mailed on November 21, 1974, was clearly timely.

Finally, the NPA's for the years in question were all issued prior to the commencement of the extension period allowed by section 18586.3 of the Revenue and Taxation Code. Appellants advised respondent of the final federal determination with respect to all years on or about April 18, 1975. Under the provisions of section 18586.3, notices of proposed assessment based upon those federal adjustments could have been issued as late as October 18, 1975, six months after appellants notified respondent of such adjustments. Thus, the NPA's issued on August 12, 1974, and November 21, 1974, were not barred by the time period set forth in section 18586.3. The fact that those NPA's in fact antedated the final federal determination merely places them more clearly within the allowable limitations period. (See Appeal of David B. and Delores Y. Gibson, Cal. St. Bd. of Equal., April 22, 1975.)

With respect to the sufficiency of the NPA's under section 18584 of the Revenue and Taxation Code, we believe that our decision of June 3, 1975, in Appeal of Avis J. Luer is **dispositive** of this issue. We there held that where a deficiency assessment is based upon federal audit adjustments, a statement to that effect on the NPA is sufficient notice to the taxpayer of the basis of the assessment. In the instant case the NPA's of August 12, 1974, and November 21, 1974, clearly stated that the additional assessments were based upon reports of federal adjustments.

For the reasons stated above, we conclude that the assessments in question were both timely and sufficient. Respondent's action must therefore be sustained.

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O R D E R

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 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of King and Dorothy Crosno against a proposed assessment of additional personal income tax and penalty in the total amount of \$151.85 for the year 1966, and on the protest of **King** and **Dona M. Crosno** against proposed assessments of additional personal income tax and penalties in the total amounts of **\$1,899.88, \$1,140.55, \$1,166.98** and \$866.80 for the years 1968, 1969, 1970 and 1971, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of **January, 1979**, by the State Board of Equalization.

William W. Davis Chairman
John R. ... Member
George ... Member
_____, Member
_____, Member