



Appeal of Harold G. Jindrich

he contested a **deficiency** assessment, including penalties, in the amount of \$429.00. (See Appeal of Harold G. Jindrich, Cal. St. Rd. of Equal., April 6, 1977.) That assessment was based on information received from the Internal Revenue Service, and we sustained it when appellant made no effort to show that it was wrong in any respect. **We also sustained** the imposition of two penalties for failure to file a timely 1972 return and for failure to **file** a return after notice and demand.

Following our decision, appellant finally filed a 1972 return on March 20, 1978, reporting adjusted gross income of about **\$9,500.00**, itemized deductions of over **\$6,000.00**, and a total tax liability, based on income averaging, of \$9.00. Since his employer had withheld \$42.00 in state income tax from his wages, appellant claimed a refund of \$33.00. Respondent disallowed the refund claim on the ground that it had not been timely filed, and the correctness of that action is the question we face in this appeal.

Revenue and Taxation Code section 19053 provides, in pertinent part, as follows:

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, ...

The last day for filing a timely 1972 return was April 15, 1973. (Rev. & Tax. Code, § 18432.) Four years from that date expired on April 15, 1977. For purposes of section 19053, tax which is **paid by** withholding is considered to have been paid on the last day prescribed for payment of the tax for that **year**. (Rev. & Tax. Code, § 18588, **subd.** (a).) In this case, appellant's 1972 tax was required to be paid on April 15, 1973. (Rev. & Tax. Code, § 18551.) One year from that date ended on April 15, 1974. Under the provisions of section 19053, therefore, appellant's refund claim could not be allowed unless it was filed by April 15, 1977. Since appellant's return claiming the refund was not filed until March 20, 1978, respondent properly denied the refund claim for untimeliness.

Appellant seeks to avoid this result by contending that his letters to respondent and to us regarding the deficiency assessment previously asserted **against** him constituted a timely **claim for** refund. As far as we can determine; however, none of these letters asked for a refund, and

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certainly none was treated as a refund claim. Under such circumstances, it has been held that a letter of protest against a proposed deficiency assessment will not be recognized as a valid and timely claim for refund. (W. F. Young, Inc., ¶ 40,218 P-H Memo. B.T.A. (1940), revd. on other grounds, 120 F.2d 159 (1st Cir. 1941); Mohawk Rubber Co. v. United States, 25 F. Supp. 228 (1938), cert. den., 307 U.S. 645 [83 L. Ed. 15251 (1939).])

For the reasons expressed above, respondent's action in this matter will be sustained.

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 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Harold G. Jindrich, for refund of personal income tax in the amount of \$33.00 for the year 1972, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of August, 1979, by the State Board of Equalization.

John J. Berg, Chairman  
David A. Berg, Member  
Robert J. Berg, Member  
Jack Kelly, Member  
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