BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 84A-923-PD
CHARLES R. TOUSHIN)

For Appellant: Charles R. Toushin, in pro. per.

For Respondent: Israel Rogers
Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593[1/] of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Charles R. Toushin against a proposed assessment of additional personal income tax in the amount of $13,445 for the year 1980.

1/ Unless otherwise specified, all section references are to sections of the Revenue and Taxation Code as in effect for the year in issue.

The issue in this appeal is whether, after conducting its own audit, respondent may issue a timely assessment based on a final federal determination.

In 1982, respondent notified appellant that his return for 1980 would be examined and requested information regarding any federal audit for the same year. Appellant advised respondent that his return was being audited by the Internal Revenue Service (IRS), the status of the audit, and also provided the additional requested information regarding his state return. Early in 1983, respondent notified appellant that they would suspend examination of his return pending the outcome of the IRS audit. Unbeknown to respondent, the IRS had completed their examination of appellant's federal return on November 24, 1982, and assessed a significant deficiency to which appellant agreed. However, appellant failed to notify respondent of this fact and, on March 14; 1983, respondent sent appellant the following letter:

> Our recent examination of the tax return for [1980] resulted in no change in your tax liability.
>
> The policy of this department is to not reopen an examination once it has been completed. You should, however, be aware that if we receive new information having a material effect on your tax liability, a reopening of the examination can occur. An example of this situation would be the receipt of an Internal Revenue Service audit report showing adjustments that are also applicable to your state return.

After receiving a copy of the federal audit report from the IRS on August 29, 1983, respondent issued a Notice of Tax Proposed to be Assessed (NPA) for 1980 based on the adjustments reported by the IRS. Appellant protested. After consideration, respondent affirmed its proposed assessment. This appeal followed.

Appellant's position is that respondent exceeded its statutory authority when it issued the protested NPA because it misrepresented its intended actions to appellant. Respondent wrote to him that it would not proceed with its audit of his 1980 return. But then it proceeded with that audit as evidenced by the "no change" conclusion expressed in its March 14, 1983, letter.

Respondent relies on sections 18451 and 18586.2. Section 18451 provided, in part:

> If the amount of gross income or deductions for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue ... such taxpayer shall report such change or correction ... within 90 days after the final determination of such change or correction . . . and shall concede the accuracy of such determination or state wherein it is erroneous.

Section 18586.2 provided, in part:

> If a taxpayer shall fail to report a change or correction by the Commissioner of Internal. Revenue . . . 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 [or] correction ... is reported to . . . the Federal Government. (Emphasis added.)

Respondent was not informed by appellant of the final federal determination, but received a copy of the report from'the IRS. So, under section 18586.2, respondent had four years from the date of the final determination, or until November 24, 1986, to issue its assessment. Accordingly, respondent's August 29, 1983, NPA was issued timely.

Furthermore, respondent is not limited to one review of a taxpayer's liability within the time it is permitted by statute to issue an assessment. (Appeal of Nicholas Phillips, Cal. St. Bd. of Equal., June 29, 1982.) The time limits on respondent's assessment powers are not qualified by any limit on the number of examinations it may perform.

Appellant does not argue that he detrimentally relied on the "no change" notice because he understood it to mean that respondent could not later issue an assessment. Nor could that argument be reasonably made. The notice he received explained that respondent's general policy of audit closure would not apply to his 1980 return if respondent received new information. An IRS audit report was mentioned as a specific example of such new information.

Accordingly, we can only conclude that respondent's assessment was timely and properly issued, and we must sustain respondent's action.

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 Charles R. Toushin against a proposed assessment of additional personal income tax in the amount of **$13,445** for the year **1980**, be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of February , **1986**, **by** the State Board of Equalization, with Board Members Mr. Nevins, Mr. Collis, Mr. Bennett, Mr. Dronenburg and Mr. Harvey present.

Richard Nevins , Chairman

Conway H. Collis , Member

William M. Bennett' , Member

Ernest J. Dronenburg, Jr. , Member

Walter Harvey* , Member

*For Kenneth Cory; per Government Code section 7.9