

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 079

June 16, 1958

EFFECTIVE DATE OF AMENDMENTS: APPLICATION OF PERSONAL INCOME TAX
LAW SECTION 19053.9

Syllabus:

Section 19053.9 which in the case of related taxpayers authorizes an overpayment to be offset against a deficiency cannot be applied where the overpayment was already barred on the effective date of the section.

Advice is requested whether section 19053.9 can be applied to a case where a readjustment to 1946 community income has resulted in a deficiency as to the husband and an overpayment to the wife. The statutory period for assessing a deficiency is still open, but the overpayment barred before April 8, 1953.

The act which added section 19053.9 to the code (Stats. 1953, p. 880) provided that it was to take effect immediately. The bill was filed with the Secretary of State on April 8, 1953, establishing that date as the effective date of the act.

It is clear that the act must not be considered to authorize the offset of overpayments barred prior to April 8, 1953, even though the corresponding deficiency assessment is not barred. As to the wife's overpayment in the instant case, the State's claim to the tax had vested, the money had been reduced to possession, and the wife's administrative and judicial remedies for redetermination of her liability had expired. To restore the overpayment at this time by allowing it as an offset in computing the husband's liability would be to place a construction of section 19053.9 which would violate the constitutional prohibition against gifts of public money (Cal. Const. Art. IV, Sec 31).