

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 197

March 5, 1957

REFUND CLAIMS: VALIDITY OF REFUND CLAIM OF TRANSFEREE

Syllabus:

A transferee of the taxpayer qualifies as a "taxpayer" within the meaning of Section 19053.3.

Taxpayer X created a trust of her entire estate, reserving the income for life with remainder over to her children. After her death in 1954 her children filed federal waivers extending the statute of limitations to June 30, 1956 for further assessment of deficiencies on X's 1949 and 1950 tax. On April 12, 1956, before the expiration of this extended periods, the transferees filed claims for refund of personal income taxes paid to this State by X for the years 1949 and 1950. An opinion has been requested as to whether these claims were timely filed.

Section 19053.3 provides in effect, that if a "taxpayer" has filed a State of Federal waiver under the provisions of Section 18587 or 18589 he has the same period within which to file a claim for refund. Prior to 1938 when Section 311(b)(4) was added to the Internal Revenue Code, the courts had already concluded that a transferee qualified as a "taxpayer" within the intention of Section 276 of the Federal law. United States v Markowitz, 34 F2d 827. (Section 276 which authorizes a "taxpayer" to waive the statute of limitations is the federal counterpart to Section 18589 and an agreement executed under Section 276 constitutes a federal waiver within the meaning of Section 18587.) In view of this interpretation we conclude that the enactment of Section 311(b)(4) was a mere clarification of existing law to eliminate any doubt as to whether a transferee had the right to waive the statute of limitations. Therefore, the federal waiver executed by the transferees in the instant case constitute a waiver within the meaning of Section 18587 even though the Personal Income Tax Law contains no counterpart to 1939 Internal Revenue Code Section 311(b)(4). Consequently Section 19053.3 is applicable to this case and operates to extend the claim period beyond the date the instant claim was filed.

Any doubt as to whether a transferee qualifies as a "taxpayer" within the meaning of Section 19053.3 as well as Sections 19587 and 19589 is resolved by the decision in Phillips v Howe Films Company, 33 F2d 891, a case decided prior to the enactment of Section 311(b)(4). In that case a successor corporation filed a waiver under Section 276. A provision of the 1926 Revenue Act extended the limitation period for filing refund claims if a waiver was executed by the "taxpayer".

The court held that the waiver was valid, and a recovery by the transferee of federal income taxes paid by the transferor was allowed. See also Lehn & Fink Products Corporation, 7 TC 287. For the above reasons it is concluded that the claim filed by X's transferees was a timely claim.