CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 328

April 23, 1968

ESTATES: STATUTE OF LIMITATIONS

Syllabus:

The 18-month limitation period of Revenue and Taxation Code, Section 19266, will not be applied to bar liability of the surviving spouse when a joint return is filed; the 18-month limitation of Section 19266 will be applied to bar liability of decedent's estate, notwithstanding the fact that the conditions of Sections 18586.2, 18586.3, or 18587 are fulfilled.

The general statute of limitations on assessments contained in Section 18586 is applicable to assessments against a surviving spouse based upon a joint return, notwithstanding the fact that the deceased spouse's fiduciary has made a request for prompt assessment under Section 19266. This follows from the similarity of California and federal law on liability for taxes where joint returns are filed and on a fiduciary's request for prompt assessment and from the fact that the Internal Revenue Service has ruled in this manner.

However, as to decedent's estate, the 18-month period of limitation controls, notwithstanding the fact that conditions for application of Sections 18586.2, 18586.3, or 18587 exist. This latter issue is outside the scope of federal authority.

Further, a prior FTB memorandum reached this result in comparing Sections 19266 and 18586.2, and that memorandum was published in 1958. Whatever limitations would apply to Section 18586.2 are hereby deemed equally applicable to Sections 18586.3 and 18587.

Finally, New York has similar statutes providing extended limitations in the event of federal changes to tax computation, and it has recently revised its law to expressly make the 18-month limitation subordinate in the event of federal changes. California patterned its statutes with respect to federal changes after those of New York, but California has not altered its law as has New York.