

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 408

October 17, 1977

RENTER'S CREDIT: STATUTE OF LIMITATIONS

Syllabus:

The renter's credit first became available to taxpayers in taxable year 1973. Advice has been sought as to the applicable limitations period on claims for refund of renter's credit and as to whether the renter's credit may be recouped on a delinquent return when the tax due exceeds the credit.

Questions:

1. In those cases where returns have been timely filed, should claims for refund of renter's credit for taxable year 1973 filed after April 15, 1978, be denied?
2. If the filing of a return is more than four years delinquent, will the renter's credit be allowed to the extent to which it offsets the tax liability?

Decision:

1. Yes.
2. Yes.

Discussion:

1. The period during which taxpayers may claim refunds of renter's credit is limited by Chapter 20 of the Personal Income Tax Law since the claiming of a credit is procedurally linked with the regular filing of the personal income tax returns in the following manner:

Revenue and Taxation Code Section 17053.5(f) provides that the renter's credit shall be claimed on forms filed with the Franchise Tax Board on the date prescribed by Section 18432. Section 18432 states that personal income tax returns are to be filed on or before the 15th day of the 4th month following the close of the calendar or fiscal year.

Because the renter's credit is to be claimed in the usual course of filing personal income tax returns, the timeliness of claims for refund of the credit is properly determined by Section 19053, et seq. While factual situations may arise which would bring a case within the purview of sections of Chapter 20

other than Section 19053, the instant ruling addresses the case where a credit is claimed for a year in which a return has been timely filed. In such a case, the claim for refund is limited by Section 19053, which provides:

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, . . .

Section 18588 provides that for purposes of Section 19053, payment of any portion of tax will be considered to have been made on the last day prescribed for payment. Therefore, in those cases where returns have been timely filed for taxable year 1973, claims for refund of renter's credit for that year, filed after April 15, 1978, are time barred and will be denied.

2. The renter's credit may be claimed on returns filed after the expiration of the statutory four year period, but only that amount which offsets the tax liability will be allowed. Thus, if the tax due is less than the credit, since refunds are barred by Section 19053, only that portion of the credit which reduces the liability to zero is available. The full renter's credit may be taken when the tax liability is equal to or exceeds the credit.

The renter's credit remains available because the amount of tax due on delinquent returns is determined with respect to the events of the taxable year. Delinquent filing is penalized not by disallowing credits or deductions, but by adding an additional 5% of the tax per month up to a maximum of 25% of the tax (Section 18681(a)).

Further, subdivision (b) of Section 18681 provides that the penalty described in subdivision (a) applies only to the net amount of taxes due, specifically allowing the amount of tax shown on the return to be reduced "by the amount of any credit against the tax which may be claimed on the return." (Emphasis added.)

From time to time, various credits within the Personal Income Tax Law have been promulgated together with special requirements as to the proper time and manner for claiming them. They were lost if they were not so claimed. Since the Legislature has not thus limited the renter's credit, it is among the credits contemplated by Section 18681 as remaining available for the purpose of determining net income taxes subject to penalty for delinquent filing.