

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

BAYARD M. ORDLOCK et al.,

Plaintiffs and Appellants,

v.

FRANCHISE TAX BOARD,

Defendant and Respondent.

B169465

(Los Angeles County
Super. Ct. No. BC278386)

ORDER MODIFYING OPINION
AND DENYING REHARING
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on July 28, 2004, be modified as follows:

On page 7, add the following two paragraphs after the last paragraph:

FTB makes the argument, for the first time in a petition for rehearing and without supporting citation or authority, that Taxpayers had to report pursuant to section 18622, subdivision (a), the changes and corrections by the federal authorities because of the increase of the amount of tax *payable*, whether or not that increase could have been *assessed or collected* under section 19057. Put another way, FTB contends that *payable* means that the taxes were owing, notwithstanding their assessment or collection might have been time-barred under section 19057; because they were *payable*, they had to be reported under section 19060, and Taxpayers' failure to do so allowed the taxes to be

assessed under that section. We disagree. It is doubtful that the Legislature intended to extend the statute of limitations or to revive a time-barred tax deficiency assessment by way of this statutory scheme. The express language of the statutes does not indicate the Legislature intended that taxes that cannot be *assessed or collected* by the taxing authorities because of a statute of limitations bar are nevertheless *payable*. As noted, “[i]n case of doubt, construction is to favor the taxpayer rather than the government” (*Edison California Stores v. McColgan*, *supra*, 30 Cal.2d at p. 476), and “[s]tatutes of limitations are to be viewed favorably” (*People v. Universal Film Exchanges*, *supra*, 34 Cal.2d at p. 659).

And FTB’s construction of “payable” in section 18622, subdivision (a) fails to take into account the words following it, in violation of the rule requiring that meaning be given to all words in a statute. The statute specifies that the federal changes need not be reported unless they increase the amount of tax “payable under this part.” The four-year statute of limitations is included “under this part.” Thus, FTB’s attempt to read the word “payable” in isolation must fail.

There is no change in the judgment.

The petition for rehearing is denied.

MALLANO, J.

ORTEGA, Acting P.J.