

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18011380  
)  
**DENNIS R. LIFF** ) Date Issued:  
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)  
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**OPINION**

Representing the Parties:

For Appellants: Dennis R. Liff  
For Respondent: Bradley Coutinho, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,<sup>1</sup> Dennis R. Liff (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in denying appellant’s claim for refund for the 2009 tax year.<sup>2</sup>

Appellant waived his right to an oral hearing and therefore the matter is being decided based on the written record.

**ISSUE**

Are appellant’s claims for refund for the 2009 tax year barred by the statute of limitations?

**FACTUAL FINDINGS**

1. FTB issued appellant a Request for Tax Return on April 24, 2012, for tax year 2009. The request was addressed to appellant at an address on Wilshire Boulevard in California. That address was the most recent address FTB had in its files for appellant.
2. Appellant claims he never received the request, and he failed to respond to it.
3. FTB issued a Notice of Proposed Assessment (NPA) on June 25, 2012, also to the Wilshire Boulevard address, proposing to assess appellant with \$4,222 in taxes,

<sup>1</sup> Unless otherwise indicated, all further statutory references are to the California Revenue and Taxation Code.

<sup>2</sup> Although appellant requested a refund of \$6,481.84, he paid a total of \$6,322.84.

- \$1,055.50 in penalties, plus interest. Appellant claims he did not timely receive that notice. He did not file a protest from the notice, and it became final.
4. FTB issued a billing notice on September 17, 2012, that added a \$159 collection fee.
  5. FTB commenced wage garnishment against appellant in 2013 to collect the amount owed for 2009.
  6. Appellant made his final payment toward the total amount due of \$6,322.84 on September 15, 2013, pursuant to an Earnings Withholding Order for Taxes issued on January 28, 2013.
  7. Appellant filed his 2009 tax return with FTB on April 15, 2016. FTB processed the return and accepted it as filed. This resulted in an overpayment balance of \$6,322.84 for appellant's 2009 tax year. FTB did not refund the overpayment, on the ground that appellant's claim for refund (here, appellant's 2009 return, filed April 15, 2016), was filed after the expiration of the statute of limitations for obtaining a refund.
  8. On or about December 10, 2016, appellant submitted a Form 2917, "Reasonable Cause – Individual and Fiduciary Claim for Refund, to FTB, seeking a "refund of the taxes and fees paid for tax year 2009."
  9. After receiving appellant's Form 2917, FTB issued a notice to appellant on January 25, 2017, denying his claim for refund of penalties and interest for 2009.
  10. Appellant filed this timely appeal by letter postmarked April 20, 2017.<sup>3</sup>

### DISCUSSION

Every individual subject to California taxation, with gross income or adjusted gross income in excess of a minimum amount, annually adjusted for inflation, must file a return with the State of California. (§ 18501.) Appellant did not timely file a return for tax year 2009. FTB received information indicating that appellant received taxable income in 2009 in an amount that generated a return-filing requirement, and issued a Request for Tax Return to appellant on April 24, 2012.

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<sup>3</sup> Although FTB admits that it treated appellant's late-filed return as a claim for refund, there is no evidence that FTB ever denied that claim. Accordingly, we treat appellant's appeal letter dated April 20, 2017, as a deemed denial of, and timely appeal from, that claim in addition to the timely appeal from FTB's January 25, 2017 denial of appellant's claim for refund of the interest and penalties made on Form 2917.

Appellant failed to respond to that request. He stated that he had moved from his prior address on Wilshire Boulevard and never received the request. He did not file a return for 2009 since he believed he did not earn sufficient income to require him to file a return.

The record shows FTB had addressed its Request for Tax Return to the address shown on the last return it had on file for appellant. Using that address is appropriate unless appellant provided a clear notification of a different address. (§ 18416.) Appellant admits that he failed to inform FTB of his new address.

Inasmuch as appellant failed to timely respond to FTB's request for tax return and NPA, FTB's determination that appellant owed \$4,222 in taxes, plus penalties and interest for 2009 became a final liability. FTB proceeded to collect this liability in full through wage garnishment, with the final payment having been made on September 15, 2013. FTB collected a total of \$6,322.84 from appellant's wages and applied it to his 2009 liability.

When appellant finally filed his 2009 tax return on April 15, 2016, he reported zero taxable income and zero tax liability. FTB processed the late-filed return and accepted it as filed. This resulted in an account overpayment balance of \$6,322.84 for appellant's 2009 tax year. FTB declined to refund the overpayment amount, however, on the ground that both of appellant's claims for refund (appellant's 2009 return, filed April 15, 2016, and appellant's Form 2917, submitted December 10, 2016), were filed long after the expiration of the statute of limitations.

Section 19306(a), provides as follows:

No credit or refund shall be allowed or made after a period ending four years from the date the return was filed (if filed within the time prescribed by Section 18567 or 18604, whichever is applicable), four years from the last day prescribed for filing the return (determined without regard to any extension of time for filing the return), or after one year from the date of the overpayment, whichever period expires later, unless before the expiration of that period a claim therefor is filed by the taxpayer, or unless before the expiration of that period the Franchise Tax Board allows a credit, makes a refund, or mails a notice of proposed overpayment on a preprinted form prescribed by the Franchise Tax Board.

Appellant did not file his return within the time prescribed by Sections 18567 or 18604. Hence, in order for his refund claim to be timely it must have been filed by the later of April 15, 2014 (four years from the due date of his 2009 return) or September 15, 2014 (one year from the date of the payment sought to be recovered). Since both of appellant's refund claims were submitted

after September 15, 2014, appellant is not entitled to a refund of the overpayment in his 2009 tax account.

Appellant urges us to consider his circumstances, which he contends prevented him from making a timely claim. While we understand that appellant was dealing with some very difficult personal circumstances (including mental health issues of a family member, his own health problems, and an out-of-country move), California law does not permit us to ignore the strict limitations periods applicable to tax refund claims. They are mandatory. Our predecessor, the State Board of Equalization, “has consistently held that the statute of limitations on claims for refund is explicit and must be strictly construed, without exception.”<sup>4</sup> (*Appeal of James C. and Florence Meek*, 2006-SBE-001, March 28, 2006.) Illness or other unfortunate circumstances generally will not excuse compliance with the deadlines for filing a refund claim. (*Appeal of Harry O. Nylén*, 82-SBE-225, Sept. 21, 1982; but see § 19316.<sup>5</sup>) The occasional harshness of this result is justified by the fact that there must be a “day of final settlement.” (*Rothensies v. Electric Storage Battery Co.* (1946) 329 U.S. 296, 301.) Thus, according to the United States Supreme Court, “a statute of limitation is an almost indispensable element of . . . practical administration of an income tax policy.” (*Ibid.*) The statute of limitations must be applied here.

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<sup>4</sup>The Office of Tax Appeals (OTA) is the successor-in-interest to the California State Board of Equalization (BOE) with regard to income tax appeals. Therefore, precedential BOE opinions that were adopted prior to January 1, 2018, may be cited as precedential authority to OTA. (Cal. Code Regs., tit. 18, § 30501(d)(3).) BOE’s published precedential decisions, designated by “SBE,” may be found on the BOE’s website: <http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>.

<sup>5</sup> Under Section 19316, the statute of limitations for filing a claim for refund will be suspended for any period during which an individual taxpayer was “financially disabled,” defined as (a) suffering from a medical condition that is either terminal or expected to last at least one year, and (b) being unable to manage one’s financial affairs, and (c) having no authorized person to act one’s behalf. Appellant has not shown that he meets the requirements of this narrow exception to the normal statute of limitations rules.

HOLDINGS

Appellant's claims for refund were filed after the expiration of the statute of limitations, so FTB's denial of those claims was correct.

DISPOSITION

FTB's action in denying appellant's claims for refund for tax year 2009 is sustained.

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Teresa A. Stanley  
Administrative Law Judge

Concurring:

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Douglas Bramhall  
Administrative Law Judge

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Michael F. Geary  
Administrative Law Judge