

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010856
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RONALD G. PETRILLO) Date Issued: January 18, 2019
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OPINION

Representing the Parties:

For Appellant: Ronald G. Petrillo
For Respondent: Joel M. Smith, Tax Counsel
For Office of Tax Appeals: Tom Hudson, Tax Counsel III

D. BRAMHALL, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Ronald G. Petrillo (appellant) appeals from the action of the Franchise Tax Board (FTB) in denying his claim for refund in the amount of \$17,926.26 for the 1993 tax year.

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

ISSUE

Is appellant’s claim for refund barred by the statute of limitations?

FACTUAL FINDINGS

1. Appellant did not timely file his income tax return for 1993. FTB issued a letter to appellant dated December 19, 1994, demanding that appellant file a tax return or provide proof that no return was required for that year. Appellant did not respond. FTB then issued a Notice of Proposed Assessment (NPA) on February 21, 1995, which proposed to assess tax, penalties, interest, and fees in the amount of \$22,901.57. Appellant did not

- protest the assessment, so it became final on April 22, 1995. This resulted in FTB initiating collections activities.
2. Between January 9, 1996 and March 8, 1996, FTB received payments of \$3,546.78 toward appellant's liability for 1993.
 3. On February 26, 1996, appellant filed his original tax return (Form 540) for 1993 reporting California adjusted gross income of -\$6,768. FTB accepted the return, then issued a refund check March 22, 1996, in the amount of \$3,432.78, which was cashed by appellant on June 7, 1996.
 4. FTB subsequently received information from the Internal Revenue Service (IRS) increasing appellant's income for the 1993 tax year. Based on that information, FTB issued a second NPA to appellant on September 17, 1999, proposing to assess taxes, penalties, and interest for 1993 in the amount of \$404,378.09. Appellant did not protest the proposed assessment, so it became final on November 16, 1999. Again, FTB initiated collections activities.
 5. Between July 15, 2002 and September 22, 2010, FTB received \$7,756.80 in payments. On September 13, 2000, FTB also transferred \$6,026.26 from appellant's 1996 tax year and, on January 20, 2004, transferred \$595.42 from appellant's 2000 tax year.
 6. FTB abated appellant's entire tax liability for 1993 on November 2, 2010. A letter to this effect was issued to appellant on November 8, 2010. FTB treated that abatement of tax liability as appellant's claim for refund. FTB refunded appellant's most recent payment of \$178.80 from September 22, 2010, by transferring it (and \$1 of interest) to appellant's account for the 2002 tax year. Appellant's most recent payment before September 22, 2010, occurred on December 8, 2008. FTB asserts that the remaining overpayments for the 1993 tax year (which totaled \$14,313.68)¹ could not be refunded because they were barred by the statute of limitations.
 7. Appellant then sent FTB a letter dated November 18, 2016, demanding the removal of all liens against his property and threatening to "add the state" to appellant's intended lawsuit against the IRS. After additional correspondence was exchanged, appellant requested payments from FTB of \$17,926.26 for the 1993 tax year. FTB issued a letter

¹ The appeal amount is \$17,926.26. Of that amount, \$3,432.78 was previously refunded in 1996, and \$177.80 (plus \$1 of interest) was refunded in 2010, leaving the \$14,313.68 credit balance on appellant's 1993 account.

dated August 29, 2017, that formally denied appellant's request for payments related to the 1993 tax year and instructed appellant that he could appeal this action to the Board of Equalization (the predecessor agency to the Office of Tax Appeals).

8. Appellant timely appealed.

DISCUSSION

Appellant has raised significant issues with respect to his original 1993 tax liability and it appears that FTB has acknowledged that there was no actual tax liability for 1993. However, FTB followed appropriate procedures in the assessment and collection of tax for that year. Thus, an overpayment exists. However, overpayments can only be refunded or credited within an applicable statute of limitations.

The statute of limitations for claims for refunds is set forth in the California Revenue and Taxation Code (R&TC) section 19306.² Under that statute, the last day to file a claim for refund is the later of: (1) four years from the date the return was filed, if filed within the extended due date; (2) four years from the due date of the return, without regard to extensions; or (3) one year from the date of the overpayment.

The law clearly provides that the statute of limitations on claims for refund is explicit and must be strictly construed, without exception. (*Appeal of James C. and Florence Meek*, 2006-SBE-001, Mar. 28, 2006 [citing *Appeal of Michael and Antha L. Avril*, 78-SBE-072, Aug. 15, 1978, and *Appeal of Earl and Marion Matthiessen*, 85-SBE-077, July 30, 1985].) Therefore, “a taxpayer’s failure to file a claim for refund, for whatever reason, within the statutory period bars him from doing so at a later date.” (*Appeal of Earl and Marion Matthiessen, supra.*) Federal courts have noted that fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223 [citing *United States v. Locke* (1985) 471 U.S. 84;

² R&TC sections 19311 and 19316 provide limited exceptions to the general statute of limitations specified in R&TC section 19306. R&TC section 19311 provides that if a change or correction is made or allowed by the IRS, a claim for refund resulting from the adjustment may be filed within two years from the date of the final federal determination or within the general period provided in R&TC section 19306, whichever period expires later. R&TC section 19316, subdivision (a) suspends the limitations period specified in R&TC section 19306 during any period in which a taxpayer is financially disabled. The term “financially disabled” is defined to mean that the taxpayer is unable to manage his financial affairs due to a physical or mental impairment that is either deemed to be a terminal impairment or is expected to last for a continuous period of not less than 12 months. A taxpayer is not financially disabled if his spouse or any other person is legally authorized to act on his behalf in financial matters. Appellant does not contend, and the evidence does not show, that these limited exceptions might apply to this appeal.

United States v. Boyle (1985) 469 U.S. 241, 249].) Similarly, federal courts have consistently held that there is no equitable tolling of the statute of limitations on refund claims. (*United States v. Brockamp* (1997) 519 U.S. 347; see also *Reynoso v. United States* (9th Cir. 2012) 692 F.3d 973, 982.)

In this appeal, the due date for appellant's 1993 income tax return was April 15, 1994, so the four-year statute of limitations expired on April 15, 1998. Appellant's most recent payment occurred on September 22, 2010, but that payment was already refunded by FTB. Appellant's most recent payment before that date occurred on December 8, 2008, according to FTB, so the statute of limitations for that overpayment expired one year later, on December 8, 2009. There is no evidence in the record showing that appellant filed a valid claim for refund before December 8, 2009. In fact, it appears from the record that appellant's initial claim for refund was not filed until November 18, 2016 (although FTB treated its 2010 abatement letter as a claim for refund).

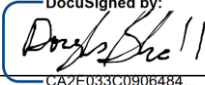
We are sympathetic to appellant's situation, but California law does not permit the statute of limitations to be waived, ignored, or tolled for reasonable cause or equitable considerations. The Office of Tax Appeals has no legal basis to overturn FTB's determination that appellant's claim for refund is barred by the statute of limitations.

HOLDING

Appellant's claim for refund is barred by the statute of limitations.

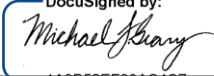
DISPOSITION

FTB's action in denying appellant's claim for refund is sustained.


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Douglas Bramhall
Administrative Law Judge

We concur:

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Michael F. Geary
Administrative Law Judge

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Linda C. Cheng
Administrative Law Judge