

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18010738
)
MARVIN E. CATCHINGS AND) Date Issued: March 20, 2019
WINNIE V. CATCHINGS)
_____)

OPINION

Representing the Parties:

For Appellants: Marvin E. Catchings, Jr.¹

For Franchise Tax Board (FTB): Brad J. Coutinho, Tax Counsel

For Office of Tax Appeals: Tom Hudson, Tax Counsel III

G. Thompson, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045, appellants Marvin E. Catchings and Winnie V. Catchings appeal from the actions of FTB denying their protest of FTB’s actions affirming proposed assessments of \$25,624 in additional tax for 2005 and \$10,831 in additional tax for 2006, plus interest for both years.²

Appellants did not respond to a Notice of Oral Hearing. Appellants also did not respond to a subsequent letter advising that, because they failed to respond to the Notice of Oral Hearing, this appeal would be decided based on the written record and without an oral hearing. Accordingly, this appeal is being decided based on the written record and without an oral hearing.

¹ Appellants’ appeal letter was signed by them and Valerie D. Catchings.

² FTB concedes there was a delay in handling the protests for both tax years and, as a result, will abate a portion of the accrued interest. For the 2005 tax year, interest of approximately \$4,341 will be abated for the period from October 5, 2010, to January 14, 2015. For the 2006 tax year, interest of approximately \$1,837 will be abated for the period from October 12, 2010, to January 14, 2015. Appellants have not contested FTB’s interest calculation or argued that they are entitled to additional interest abatement.

ISSUE

Whether FTB's proposed assessments are barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellants jointly filed timely California income tax returns (Form 540) for 2005 and 2006. For both years, appellants reported no tax liability.³
2. By letter dated November 5, 2008, FTB notified appellants of an audit concerning their Schedule C (Profit and Loss from Business) for both 2005 and 2006, as well as a sale of real property that was not reported by appellants for the 2005 tax year. FTB requested specific documents from appellants (such as a copy of sale documents and an explanation of why the sale was not reported) and subsequently granted appellants two extensions of time to produce the requested documents.
3. On or about March 28, 2009, appellants filed amended California returns for both 2005 and 2006. The 2005 amended return increased appellants' reported taxable income from zero to \$99,449 and calculated tax of \$4,834. The 2005 amended return included an explanation stating that the original return accidentally omitted capital gain as well as the payment of commissions and real estate tax. It also reported \$7,659 of real estate withholding, however FTB's records reflect only \$17 of income tax withholding. The 2006 amended return reduced appellants' reported taxable income from \$32,349 to zero and reported no tax. The 2006 tax return claimed that appellants' original tax return accidentally omitted commissions paid.
4. On March 11, 2010, FTB notified appellants that it had completed its examination of appellants' 2005 and 2006 tax returns. FTB explained its adjustments as follows:
 - a. For 2005, FTB stated that it increased appellants' capital gain by \$203,982 due to the sale of real property and increased appellants' Schedule C net income by \$115,652. FTB's adjustments to Schedule C net income reflected, among other things, an additional \$125,665 of Schedule C gross receipts due to unreported Form 1099-MISC income and the disallowance of \$211,531 in claimed commission expenses. FTB also stated that, while appellants claimed \$7,659 of real estate withholding, and a closing escrow statement had been

³ FTB states that appellants also filed an identical tax return for 2006 on May 15, 2007.

provided, it appeared that no such withholding payment had been sent to FTB. FTB requested that appellants provide a copy of a Form 593-B (Real Estate Withholding Tax Statement) from the sale of the property and a bank statement showing the payment.

- b. For 2006, FTB stated that it disallowed \$170,000 in claimed commission expenses. With respect to the claimed commission expenses, FTB explained that it had not been able to verify the Forms 1099-MISC that appellants provided and stated that it needed cancelled checks to verify that the payments were made.
5. The proposed adjustments reflected in FTB's March 11, 2010 letter increased appellants' taxable income to \$319,206 for 2005 and \$166,157 for 2006, and resulted in the additional tax at issue in this appeal (i.e., \$25,624 in additional tax for 2005 and \$10,831 in additional tax for 2006). FTB stated that, if appellants disagreed with its determination, they should provide a detailed explanation by April 1, 2010, and include any applicable tax authority or supporting documents.
6. On April 7, 2010, appellants executed a waiver extending the statute of limitations for FTB to issue a proposed assessment for the 2005 tax year to October 15, 2010.⁴
7. On May 21, 2010, FTB sent appellants a letter stating that it had not received a response to its March 11, 2010 letter. FTB requested a response and stated that, if no response was received, it would issue a proposed assessment. FTB states that it never received a response to this letter.
8. On August 12, 2010, FTB issued Notices of Proposed Assessment (NPAs) proposing to assess the additional tax at issue in this appeal, plus applicable interest. The NPAs reflected the same adjustments indicated in FTB's March 11, 2010 letter. The NPA for the 2005 tax year also noted that the statute of limitations was extended to October 15, 2010, due to the waiver appellants signed on April 7, 2010.
9. Appellants protested the proposed assessments. In their protests, appellants stated that the capital gain and non-employee compensation (apparently referring to the \$115,652 of Schedule C net income shown in the NPA for the 2005 tax year) were both reported on

⁴ Presumably, there must have been some communications between appellants and FTB in which FTB requested that appellants execute the waiver. However, the record does not include any such communications.

their federal and state tax returns, which they were attaching with their protest.⁵

Appellants also stated they were attaching Forms 1099-MISC, in the amounts of \$40,000 and \$150,00 for 2005 and 2006, respectively, that were made out to a third-party individual.⁶ Appellants stated that they provided the Forms 1099-MISC to the Internal Revenue Service.

10. In response to appellants' protests, FTB explained that the capital gain appellants referenced was not included in appellants' original tax return for 2005 but it was included in FTB's NPA for 2005. FTB further explained that the capital gain was not being taxed twice. With respect to the Forms 1099-MISC, FTB stated that the Forms 1099-MISC were not sufficient to substantiate the claimed expenses. FTB stated that, as it indicated at audit, copies of cancelled checks were needed to substantiate actual payment. FTB stated that, if appellants wished to do so, they could provide additional documentation. However, FTB stated that, unless it received a response within 30 days, it would affirm the NPAs.
11. FTB issued Notice of Actions (NOAs) on May 21, 2015, affirming the proposed assessments as stated in the NPAs.
12. Appellants then filed this timely appeal.⁷ On appeal, appellants' only argument is that the proposed assessments were issued after the expiration of the statute of limitations; appellants do not challenge the amount of tax or interest imposed.

DISCUSSION

R&TC section 19057(a) generally provides that the notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. R&TC section 19067(a) provides an extension of time for issuing proposed assessments beyond the four-year period when "the taxpayer consents in writing to an assessment after that time."

⁵ The appeal record includes the protest letter without its attachments. It appears that, at least with regard to their California tax returns, appellants were referring to the amended tax returns described above, which appellants filed during audit. FTB provided relevant portions of those amended tax returns.

⁶ As it is not relevant to the issues on appeal, we have not included the individual's name.

⁷ This appeal was deferred several times to allow time for the parties to settle or otherwise resolve the matter and once to allow appellants additional time to prepare.

Appellants' tax return for 2005 was filed on April 15, 2006, so the statute of limitations generally would have expired four years later, on April 15, 2010, which is before the NPA was issued for that year on August 12, 2010. However, appellants executed a timely waiver of the statute of limitations that extended the deadline for a proposed assessment to October 15, 2010. Thus, the NPA was issued in a timely manner, in accordance with R&TC section 19067, because FTB issued the proposed assessment before the extended deadline of October 15, 2010.

For the 2006 tax year, the statute of limitations for proposed assessments did not expire until April 15, 2011, which is four years after appellants filed their original tax return on April 15, 2007. The NPA for the 2006 tax year was dated August 12, 2010. Therefore, the assessment for 2006 was issued in a timely manner within the normal four-year period after the filing of the return, as provided for in R&TC section 19057.

In their appeal letter, appellants argued, through their representative, that the proposed assessments were issued after the expiration of the statute of limitations. Appellants' representative appeared to have been under the mistaken impression that R&TC section 19057 required FTB to issue the NOAs within four years of the original tax returns. However, R&TC section 19057 only imposes a time limit on the issuance of the NPAs and, as noted previously, the NPAs were timely issued.

Appellants' representative also denied that appellants executed a waiver of the statute of limitations and requested that FTB provide a copy of the signed waiver. FTB then provided a copy of the signed waiver and no further response was received from appellants or their representative.

On appeal, appellants have not contested FTB's determination that additional tax was due. However, as appellants did raise such arguments at protest, we will briefly address them out of caution. At protest, appellants appeared to argue that the 2005 NPA should not include capital gain that was reported in the amended California tax return that they filed at audit. However, since this capital gain was not reported on appellants' original return, FTB properly included the capital gain in its NPA. Appellants also claimed the payment of real estate withholding, but there is no evidence in the appeal record to substantiate that the claimed real

estate withholding was paid.⁸ During audit and protest, appellants apparently provided FTB with Forms 1099-MISC totaling \$190,000 that they claim to have issued to reflect payments they made to an individual. Appellants appear to have contended that they inadvertently omitted these payments on their original tax returns. We have no evidence, such as cancelled checks or bank transfers, to substantiate that the claimed payments were made. Accordingly, we see no error in FTB’s calculation of additional tax.

HOLDING

FTB’s proposed assessments are not barred by the statute of limitations.

DISPOSITION

FTB’s actions on its proposed assessments for 2005 and 2006 are sustained except that interest is abated, as conceded by FTB, for the period from October 5, 2010, to January 14, 2015, for the 2005 tax year, and for the period from October 12, 2010, to January 14, 2015, for the 2006 tax year.

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Grant S. Thompson
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Grant S. Thompson
Administrative Law Judge

We concur:

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Nguyen Dang
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Nguyen Dang
Administrative Law Judge

DocuSigned by:
Daniel K. Cho
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Daniel K. Cho
Administrative Law Judge

⁸ During audit, FTB stated that appellants had provided a closing escrow statement to support the amount of real estate withholding claimed. However, we have no such closing escrow statement on appeal, and no other evidence to substantiate payment of the claimed real estate withholding. Further, no such withholding payment is reflected in FTB’s records.