

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011003
)
BETTS COMPANY) Date Issued: February 27, 2019
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OPINION

Representing the Parties:

For Appellant: Michael S. Holtermann

For Respondent: Brad Coutinho, Tax Counsel

For Office of Tax Appeals: Linda Frenklak, Tax Counsel IV

L. CHENG, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,¹ the Betts Company (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in denying appellant’s claim for refund in the amount of \$25,588 for the 2011 tax year.

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

ISSUE

Does the statute of limitations bar appellant’s claim for refund?

FACTUAL FINDINGS

1. On March 15, 2012, appellant made a \$30,000 payment toward its 2011 tax account.
2. According to appellant, it unsuccessfully tried to e-file its 2011 original return on

¹ Unless otherwise indicated, all “Section” references are to sections of the California Revenue and Taxation Code. Section 19045 states that taxpayers have 30 days to appeal FTB’s action upon taxpayer’s protest to the board (Board of Equalization). Effective July 1, 2017, Section 20(b) was amended to read, “Unless the context requires otherwise, as used in this code or any other code, ‘board’ with respect to an appeal, means the Office of Tax Appeals.”

- September 17, 2012, and claims that after receiving notice that FTB rejected it, appellant filed a paper return later that same week. Because appellant did not receive any notice from FTB rejecting the paper return, appellant assumed its return was processed by FTB.
3. On April 15, 2013, after receiving notice from FTB requesting that appellant file its 2011 return, appellant filed a late 2011 California Corporation Franchise or Income Tax Return (FTB Form 100), reporting an overpayment of \$9,336 and requesting that \$8,928 of the overpayment be applied to its 2012 account and \$408 be applied to penalties and interest on its 2011 account.
 4. Respondent accepted and processed appellant's 2011 return, applied \$8,928 of the overpayment to appellant's 2012 account, imposed an estimated tax penalty of \$75.30 for the 2011 account, and refunded appellant \$332.70.
 5. On September 15, 2016, appellant filed an amended 2011 tax return (FTB Form 100X), reducing its total tax from \$26,388 to the \$800 minimum franchise tax. Appellant reported payments of \$35,724, penalties and interest in the amount of \$408, and an overpayment of \$26,796. Appellant claimed a refund of \$25,588.
 6. Respondent denied this claim for refund by letter dated December 8, 2016, on grounds that the statute of limitations had expired.
 7. Appellant timely appealed, contending that its claim for refund was timely filed within the four-year statute of limitations because appellant paper-filed its 2011 original tax return the same week after it received notification that its attempted electronic-filed return on September 17, 2012, was rejected by FTB. Appellant assumed FTB had processed the paper return, until it discovered in April 2013 that FTB had not received it.
 8. To date, appellant has not provided any evidence to support its claim that it timely filed a 2011 paper return.

DISCUSSION

Section 19306(a) provides in part that no refund shall be allowed after a period ending four years from the date the return was filed (if filed within the time prescribed by Section 18567), four years from the last date 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 is later, unless before the expiration of the period, the taxpayer files a refund claim. The statute of limitations on claims for refunds is explicit and must be strictly construed, without

exception. (*Appeal of Meek*, 2006-SBE-001, Mar. 28, 2006.)² There is no equitable tolling of the statute of limitations absent direction from the Legislature. (*Id.*) The FTB does not have a duty to inform taxpayers of an overpayment or to inform taxpayers of the statute of limitations. (*Appeal of Gleason*, 86-SBE-113, June 10, 1986.)

Appellant's return for 2011 was due on March 15, 2012.³ Appellant did not file its 2011 return until April 15, 2013, more than one year after the due date and five months after the extended due date of October 15, 2012.⁴ Because the return was not timely filed, the last two time periods referenced above control. Here, the claim for refund was filed on September 15, 2016, not within four years of the due date for the return, i.e., by March 15, 2016. Consequently, only the payments made within one year preceding the filing of the claim were subject to refund or credit. Appellant made its most recent payment on its 2011 tax account on March 15, 2012, and a timely claim for refund had to have been filed by no later than March 15, 2013. Appellant's claim for refund was filed on September 15, 2016, beyond all allowable time periods under the statute.

Appellant asserts that it unsuccessfully tried to e-file its 2011 original return on September 17, 2012 and claims that a paper return was filed with FTB later that same week. According to appellant, because appellant did not receive any notice from FTB, appellant assumed its return was processed by FTB, and only after appellant discovered in April 2013 that the return was never processed did appellant file the original return. In other words, appellant claims that the 2011 original return was timely filed by the extended due date, and hence its claim for refund was timely filed within the four-year statute of limitations.

If the taxpayer places a return in a United States mailbox before the statutory filing deadline, the taxpayer must offer compelling proof, such as a registered or certified mail receipt, that the return was timely filed. (Gov. Code, § 11003; Int.Rev. Code, § 7502; *Appeal of La Salle Hotel Co.*, 66-SBE-071, Nov. 23, 1996.) Here, appellant has not offered any proof that it timely

² Pursuant to California Code of Regulations, title 18, section 30501(d)(3), precedential opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. BOE's precedential opinions are viewable on BOE's website at: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

³ Section 18601.

⁴ Section 18604.

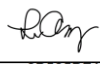
filed its 2011 original return. Consequently, this record does not contain any evidence to establish that a timely 2011 return was filed such that appellant's claim for refund fell within the four-year statute of limitations.

HOLDING

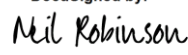
The applicable statute of limitations bars appellant's claim for refund.

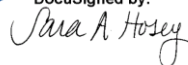
DISPOSITION

Respondent's action in denying appellant's claim for refund or credit is sustained in full.

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Linda C. Cheng
Administrative Law Judge

We concur:

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Neil Robinson
Administrative Law Judge

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Sara A. Hosey
Administrative Law Judge