

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18063367
)	
EVIA L. THOMAS)	Date Issued: March 4, 2019
)	
)	
)	

OPINION

Representing the Parties:

For Appellant: Roberto Washington, Representative

For Respondent: David Kowalczyk, Tax Counsel

KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Evia Thomas (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying her claim for refund of \$2,089 for the 2012 tax year. This matter is being decided on the written record because appellant waived her right to an oral hearing.

ISSUE

Whether appellant’s claim for refund for the 2012 tax year was filed timely.

FACTUAL FINDINGS

1. Appellant, a California resident, earned wages and other income during the 2012 tax year.
2. On February 5, 2014, FTB mailed appellant a Request for Tax Return. When appellant failed to respond, FTB estimated appellant’s income based on information available to FTB. FTB thereafter issued a Notice of Proposed Assessment (NPA) for \$2,296 in taxes (after applying withholdings of \$355), interest, and a \$574 late-filing penalty. Appellant did not protest the NPA and it went final.
3. By notice dated January 1, 2016, FTB informed appellant that it would take collection action against her unless the liability was paid within 30 days. Thereafter, FTB assessed a \$226 collection cost recovery fee and commenced collection actions when the liability continued to remain unpaid.

4. On March 14, 2016, FTB issued an Earnings Withholding Order for Taxes (wage garnishment) to each of appellant's employers. Pursuant to the wage garnishments, FTB collected \$3,358.23, which it applied towards appellant's 2012 tax liability. Additionally, appellant had \$355 in state income tax withholdings during 2012. In total, the \$3,713.23 in payments reduced the 2012 liability to \$56.74. FTB wrote off the remaining balance of appellant's liability on July 29, 2017.
5. On November 16, 2017, appellant filed her 2012 California Resident Income Tax Return, reporting no tax liability for 2012, and claiming a \$355 overpayment. FTB accepted appellant's tax return as a claim for refund for all amounts paid. FTB made no changes to appellant's return, and reduced appellant's 2012 liability from the total amount paid, \$3,713.23, to \$226, which amount represents the collection cost recovery fee.
6. On December 11, 2017, FTB refunded \$1,398.23, which is the total of all payments made during the 12-month period preceding November 16, 2017, the date appellant filed her 2012 tax return. Additionally, on the same day, FTB refunded an additional \$56.74,¹ which is the unpaid portion of the 2012 liability that FTB had written off as uncollectible. On December 11, 2017, the Internal Revenue Service (IRS) intercepted appellant's \$1,454.97 state tax refund from the California State Controller's Office, before it was paid to appellant. FTB did not refund any other payments at this time.
7. On January 22, 2018, appellant requested a refund of the additional payments on the basis of reasonable cause. In support, appellant contended that she had been a victim of identity theft because someone allegedly filed documents with the IRS without her permission.
8. On February 2, 2018, FTB denied the balance of appellant's claim for refund in the amount of \$2,089, on the basis that appellant failed to file the claim timely. This amount represents the total amount of the remaining payments (\$2,315) less the collection cost recovery fee of \$226. Appellant does not dispute the imposition of the collection cost recovery fee.
9. On May 22, 2018, appellant timely appealed FTB's decision on the basis that the time to file a claim for refund was tolled through April 22, 2017 (the date of the last wage

¹ This was in error because FTB only has statutory authority to refund an amount that was actually "paid." (R&TC, § 19301, 19302.)

garnishment before FTB wrote off the remaining liability and considered it fully paid). Appellant contends the statute was tolled pursuant to R&TC section 19322.1, because under that section a taxpayer cannot obtain a refund until full payment of a tax liability. In support, appellant submitted a copy of her 2012 tax return, dated November 16, 2017, which FTB accepted as a claim for refund of all amounts paid for the 2012 tax year.

DISCUSSION

As a general matter, when it is determined that there has been an overpayment of any liability imposed under the Personal Income Tax Law, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (R&TC, §§ 19301(a), 19302.) The law imposes time limits and other requirements on making and filing a claim for refund of taxes paid. (See R&TC, §§ 19306-19322.1.) Every claim for refund shall be in writing, signed by the taxpayer or the taxpayer's authorized representative, and state the specific grounds upon which it is founded. (R&TC, § 19322.)

R&TC section 19306 sets forth a statutory time limit on filing a claim for refund. It provides, in pertinent part, that no credit or refund shall be allowed unless a claim for refund is filed within the later of: (1) four years from the date the return was filed, if the return was timely filed pursuant to an extension of time to file; (2) four years from the due date for filing a return for the year at issue (determined without regard to any extension of time to file), or (3) one year from the date of overpayment. (R&TC, § 19306.) Under certain circumstances, a timely filed tax return that shows a credit for tax withholdings or estimated tax payments may be treated as a timely refund claim for the excess amount. (R&TC, § 19307.)

The law is settled at the federal level that a claim for refund must be filed within the time period authorized by statute and, as such, there is no equitable tolling of the statute of limitations. (*Cooper v. Commissioner* (2013) 718 F.3d 216, 225 [citing the "settled rule" established by *United States v. Brockamp* (1997) 519 U.S. 347, 352].) Considering the similarly mandatory language of R&TC section 19306 on the time limit to file a claim for refund, we also have no basis to grant a state income tax refund claim outside the time period authorized by statute.

(R&TC, § 19306; *Appeal of Meek*, 2006-SBE-001, Mar. 28, 2006.)² The law provides no basis to extend the statute of limitations for reasonable cause. (R&TC, § 19306.)

When a claim for refund is filed prior to full payment of the amount of tax assessed or asserted, it shall be considered a claim solely for purposes of tolling the statute of limitations. (R&TC, § 19322.1(a).) For all other purposes, a claim for refund is not considered filed until the date that the liability is paid in full. (R&TC, § 19322.1(a).) In the instant case, appellant's return (which FTB accepted as a claim for refund) was filed on November 16, 2017, which is more than four years after the April 15, 2013, due date to timely file a 2012 tax return. Therefore, a refund claim for this year is only timely as to payments made within the one-year period ending on November 16, 2017, the date of the refund claim. FTB refunded all payments made within this one-year period. Therefore, we have no basis to grant appellant's refund claim as to the \$2,089 in payments at issue in appeal.

With respect to appellant's contention that her refund claim is timely because R&TC section 19322.1 tolled the statute of limitations to file a refund claim, this position is contrary to the statutory language contained in section 19322.1. This section provides that full payment of the assessed tax liability is required before an otherwise valid claim for refund can be considered and, as such, this section is only relevant where the liability is not fully paid on the date a timely refund claim is filed. (R&TC, § 19322.1.) In the instant case, appellant did not file her claim for refund until after the liability was considered fully satisfied. Furthermore, there is no basis under section 19322.1 to convert a claim for refund, which was untimely on the date filed, into a timely claim for refund on the date of full payment. Therefore, appellant's claim for refund was untimely.

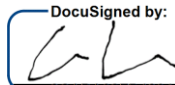
HOLDING

Appellant failed to file a timely claim for refund.

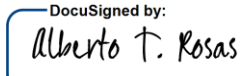
² Precedential opinions of the Board of Equalization (board) may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. The board's precedential opinions are viewable on its website: <www.boe.ca.gov/legal/legalopcont.htm>.

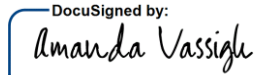
DISPOSITION

FTB's action for the 2012 tax year is sustained.

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Andrew J. Kwee
Administrative Law Judge

We concur:

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Alberto T. Rosas
Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge