

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
GRETA HEDIN

) OTA Case No. 18042858
)
) Date Issued: May 9, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Thomas G. Brenner, Enrolled Agent

For Respondent: Mira Patel, Tax Counsel

J. MARGOLIS, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Greta Hedin (appellant) appeals an action by the respondent Franchise Tax Board (FTB) denying her claim for refund for tax year 2006.

Office of Tax Appeals (OTA) Administrative Law Judges Jeffrey I. Margolis, Jeffrey G. Angeja, and Amanda Vassigh held an oral hearing for this matter in Sacramento, California, on March 26, 2019. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

ISSUE

Whether appellant’s claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant did not file a timely California return for 2007, believing that none was required.
2. FTB received information that appellant had made mortgage payments during 2006, a year for which FTB’s records showed she had not filed a return.
3. Based on that information, on July 13, 2009, FTB mailed a Request for Tax Return (Request) to appellant. The Request required appellant to file a 2006 return, provide a copy of a filed return (if she had previously filed one) or explain why she was not

required to file a 2013 return. Appellant was given 30 days (until August 12, 2009) to respond to the Request.

4. Appellant did not respond to the request.
5. On September 28, 2009, FTB issued a Notice of Proposed Assessment (NPA) proposing a tax liability of \$3,983, a late-filing penalty of \$996,¹ and interest. Appellant did not protest the NPA and, after 60 days, it became a final liability.
6. FTB applied \$22 from appellant's 2009 account to her 2006 liability on May 6, 2010.
7. FTB also placed a lien against appellant's "main home." When that property was sold in September 2014, FTB received \$6,989 that was applied to appellant's 2006 liability. This payment fully satisfied the amount then due on the assessment for 2006.
8. Although FTB's notices regarding appellant's 2006 tax year were sent to appellant's last known address, appellant claims she was first notified of there being an issue with her 2006 taxes in the first part of 2014, when she received collection notices from the FTB.
9. Three years later, while speaking with a tax advisor regarding her mother's taxes, appellant realized that she had "misunderstood the [FTB's] letters." Shortly thereafter, appellant's tax advisor contacted FTB and appellant filed, on May 15, 2017, a 2006 California income tax return reporting zero tax liability and payments of \$7,011. Appellant simultaneously filed a claim for refund for the amounts she had paid for 2006. On the claim, appellant alleged that she did not have a filing requirement for 2006 and that she was able to pay her mortgage payments with nontaxable transfers from her family. She claims that the FTB's determination that she owed taxes for 2006 is "fictitious tax assessed on fictitious income."
10. FTB processed the return without adjustment, but denied appellant's claim for refund because it was barred by the statute of limitations.
11. Appellant filed this timely appeal.
12. At the hearing, appellant provided a letter from Carl Daniel Joiner, appellant's ex-boyfriend, who stated that he made the 2006 mortgage payments upon which FTB based its determination of appellant's 2006 tax liability.

¹ All figures are rounded to the nearest dollar.

DISCUSSION

California law prohibits paying a claim for refund after the statute of limitations has expired. (R&TC, § 19306.) To be timely (i.e., within the statute of limitations), a claim for refund must be filed before the latter of: (1) four years from the date the return is 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. Appellant's return was not timely filed before the running of any of these periods. In fact, appellant's representative admits that it was not timely filed. He argues that appellant's claim should be allowed nonetheless, because FTB's income determination allegedly was erroneous. Unfortunately, the law does not permit this. (*Estate of Gillespie*, 2018-OTA-053.)² The United States Supreme Court, in *United States v. Dalm* (1990) 494 U.S. 596, 601-602, concluded that the untimely filing of a claim bars a suit for refund regardless of whether the tax is alleged to have been erroneously, illegally, or wrongfully collected.³

Accordingly, we sustain FTB's disallowance of appellant's untimely claim for refund.

HOLDING

FTB properly disallowed claim for refund, as it was not timely filed within the statute of limitations.

² Precedential decision of the Office of Tax Appeals (OTA) may be found on OTA's website at: <<https://ota.ca.gov/opinions>>.

³ We note that appellant had proper notice of the FTB's proposed assessment and knew, in 2014, of the seizure of her assets to satisfy that liability, yet she failed to file her claim for refund until 2017, long after the statute of limitations had expired.

DISPOSITION

FTB's action is sustained in full.

DocuSigned by:
Jeffrey Margolis
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Jeffrey I. Margolis
Administrative Law Judge

We concur:

DocuSigned by:
Jeff Angeja
0D390BC3CCB14A9
Jeffrey G. Angeja
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
7B17E958B7C14AC
Amanda Vassigh
Administrative Law Judge