

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18053231
ESTATE OF JOHN R. CHEWNING) Date Issued: July 9, 2019
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OPINION

Representing the Parties:

For Appellant: Normand D. Vallee, Enrolled Agent
Metro West Business Services, LLC

For Respondent: Bradley J. Coutinho, Tax Counsel

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, the Estate of John R. Chewning (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying a claim for refund in the amount of \$4,128.64 for the 2011 tax year.¹ This matter is being decided based on the written record because appellant waived the right to an oral hearing.

ISSUE

Whether appellant’s claim for refund for the 2011 tax year was filed timely.

FACTUAL FINDINGS

1. John R. Chewning (decedent) passed away on August 25, 2010.
2. On March 21, 2011, appellant filed a 2010 federal income tax return (Form 1040) with the Internal Revenue Service (IRS) on behalf of the decedent. The return reported to the IRS that Mr. Chewning was deceased, and the IRS records note on March 21, 2011, “deceased taxpayer.”

¹ The true identity of appellant, whether an estate, trust, or individual, is not entirely clear. Geraldine Fredericks was executor of John R. Chewning’s estate, and trustee of his trust. The amended state income tax return, which FTB accepted as the claim for refund at issue in this appeal, was signed by Geraldine Fredericks, as executor, and notice of FTB’s action denying that claim was issued to Mr. Chewning’s estate. Therefore, for matters of consistency, we identify appellant as the Estate of John. R Chewning.

3. The decedent's death was not reported to FTB on his 2010 California Resident Income Tax Return (Form 540).²
4. On May 19, 2015, FTB issued a notice to Geraldine Fredericks, individually, requesting that she file a 2011 California personal income tax return or explain why she is not required to file a return.
5. On June 9, 2015, Geraldine Fredericks responded to FTB's request for a tax return stating that the income that FTB was attributing to her came from the sale of property owned by the John R. Chewing Living Trust, she was the executor for the decedent's estate, and that the decedent passed away on August 25, 2010. She also explained that the decedent's estate had no other income in 2011, aside from the sale of the property.³ Attached to her cover letter was the decedent's 2011 California Resident Income Tax Return (Form 540), which she had prepared on behalf of the decedent, and signed as executor of the decedent's estate, reporting \$2,996 in tax due, plus \$500 in penalties and interest, for a total amount due of \$3,496, which appellant paid with the return. FTB received this return (Form 540) on June 12, 2015, accepted it as filed, and assessed a late-filing penalty. Appellant paid the remaining liability of \$632.64 on August 10, 2015, on behalf of the decedent.
6. On June 13, 2015, appellant filed a 2011 federal individual income tax return (Form 1040) with the IRS on behalf of the decedent, reporting \$63,474 in gross income, taxable income of \$53,974 (after deductions and the personal exemption), and a tax liability of \$2,920, which appellant paid with the return.⁴ The IRS accepted the Form 1040 but treated it as a federal income tax return on behalf of: "John R Chewing Estate, Geraldine C. Fredericks Ex[ecutor]," that should have been filed on a different form, IRS Form 1041. The IRS processed the return on January 11, 2016, disallowed various deductions and the personal exemption credit, and recomputed appellant's tax liability

² By letter dated January 7, 2019, we asked appellant to provide any evidence, such as a copy of the 2010 Form 540, which would indicate that the decedent's death was reported to FTB prior to the date the 2011 California return (Form 540) was filed. Appellant did not provide any information responsive to our request. Additionally, appellant has not made any argument or contention that it was reported to FTB.

³ Appellant uses the terms estate and trust interchangeably. Thus, it is unclear from her cover letter whether she is referring to income generated by an estate or a trust.

⁴ The \$63,474 of gross income reported on this return was long term capital gain from the sale of real property in Irvine, California, on March 9, 2011.

using the proper tax schedules.⁵ The IRS determined that the estate's tax liability was \$21,145, instead of \$2,920.

7. On July 20, 2015, FTB issued a Notice of Proposed Assessment (NPA) to Geraldine Fredericks, individually,⁶ for failing to file a return under her name in response to FTB's May 19, 2015 request for a tax return. Geraldine Fredericks protested the NPA on July 28, 2015, on the basis that: the income identified in the NPA was attributable to the decedent's estate, not her; she was the executor for the decedent's estate; the decedent passed away in 2010; and she had already filed a 2011 state income "tax return for the Estate of John R. Chewning," a copy of which she attached to her protest along with proof of payment via check.
8. On March 21, 2016, the IRS issued a Notice of Levy to the estate, for the 2011 federal income tax liability. Thereafter, on November 9, 2016, appellant filed an amended Form 1041 with the IRS, reporting no taxable income and no tax due for 2011, in the name of "The John R. Chewning Living Trust [¶] Geraldine C Fredericks Trustee." Appellant separately disputed the IRS levy on the basis that the income reported on the original federal return for 2011 (the Form 1040 that was treated as a Form 1041 by the IRS) was not accurate, and the IRS should use the figures reported on the amended federal return (Form 1041) which showed a loss.
9. On November 15, 2016, appellant requested a refund of the June 13, 2015 payment it had made to the IRS.
10. On January 10, 2017, appellant filed a 2011 California Amended Individual Income Tax Return (Form 540X) with FTB on behalf of the decedent, reporting an overpayment of \$2,996, and requesting a refund. The amended return was signed by Geraldine Fredericks, as executor, and contains the following explanation:

Income was inadvertently reported on 2011 tax return for taxpayer. The taxpayer died in 2010 and therefore no 2011 tax return should have been prepared. The income should have been reported on a CA fiduciary tax return form 541. [¶] A correct copy of the form 541 is attached.

⁵ Although the IRS accepted the Form 1040 as a Form 1041 for the estate, it applied the payment to the decedent's account.

⁶ The NPA contains no reference to Geraldine Fredericks as an executor, John R. Chewning, or to his estate or trust.

Therefore, the amount paid with the 2011 form 540 . . . should be refunded to the estate. [Emphasis omitted.]

11. FTB accepted the amended Form 540, and deleted the tax, penalties, and interest (which appellant had previously paid at the time the return was filed). Additionally, FTB treated the amended return as a refund claim for all amounts paid. However, FTB did not pay out the requested refund. According to FTB's records, the \$4,128.64 amount paid currently appears as a credit balance on the decedent's account, and FTB does not dispute that this amount represents an erroneous overpayment.
12. On March 20, 2017, the IRS accepted the amended Form 1041 as filed and deleted in full the taxes, penalties and interest on appellant's account. The IRS account transcript explains the adjustment as follows: "reduced or removed prior tax assessed."
13. On April 17, 2017, the IRS refunded the June 13, 2015 payment for the 2011 tax year (no other payments were made) as requested in appellant's November 15, 2016 letter.
14. By letter dated April 22, 2017, appellant requested refund of the tax, penalties, and interest from FTB, and requested assistance from FTB's Taxpayers' Rights Advocate to resolve the matter.
15. On September 7, 2017, appellant filed a 2011 California Fiduciary Income Tax Return (Form 541) in the name of "The John R. Chewning Living Trust," reporting no tax due and a net loss for 2011.
16. By letter dated September 22, 2017, appellant requested a refund from FTB for \$3,496, representing the tax, penalties, and interest paid with the Form 540 for 2011, filed under the decedent's name.
17. On December 11, 2017, FTB denied appellant's claim for refund on the basis that it was not timely filed.
18. On February 6, 2018, appellant timely appealed the denial letter on the basis that FTB erroneously instructed Geraldine Fredericks to file a California Resident Income Tax Return on behalf of the decedent. In support, appellant attached a copy of the July 20, 2015 NPA.
19. By letter dated January 7, 2019, we requested additional briefing on whether the IRS had made a change or correction to the decedent's 2011 tax return.

20. Appellant responded by letter dated January 31, 2019, with a copy of the IRS account transcripts for the decedent's estate or trust, and for the decedent, respectively.⁷ In support, appellant explains that the IRS accepted the decedent's 2011 tax return (Form 1040) as a valid tax return filed on behalf of the decedent's estate or trust (Form 1041).
21. By letter dated March 20, 2019, FTB contends that the pertinent account transcript is that of the *decedent* (as opposed to the *trust or estate*) and there was no final federal determination issued to the decedent. In support, FTB refers to the decedent's IRS account transcript, submitted by appellant, as proof that the IRS did not accept the decedent's 2011 tax return as a valid individual income tax return (Form 1040).

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 or the Corporation 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, 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.)

The four-year statute of limitations under R&TC section 19306

The statute of limitations to file a claim for refund is set forth in R&TC section 19306. The statute of limitations provides, in pertinent part, that no credit or refund may 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.) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*United States v.*

⁷ The IRS treated the estate and the trust as the same entity for 2011 (hereinafter "estate or trust"). Specifically, although the IRS accepted the amended Form 1041 filed for tax year 2011 in the name of "The John R. Chewning Living Trust, Geraldine C. Fredericks Trustee," the IRS Account Transcript is still under the name of "John R. Chewning estate [¶] Geraldine C Fredericks executor." As relevant, appellant signed the original Form 1040 for the 2011 tax year as "Executor," which the IRS accepted as a Form 1041 return for the estate.

Brockamp, (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations]; *Estate of Barbara D. Gillespie (dec'd)* 2018-OTA-052P.)

In the instant case, the amended 2011 personal income tax return, which FTB accepted as a claim for refund in the amount of \$4,128.64, was filed on January 10, 2017. This is more than four years after the April 15, 2012, due date for an individual to timely file a 2011 California Income Tax Return. (R&TC, § 18566.) Therefore, appellant's refund claim is only timely as to payments made within the 12-month period ending on January 10, 2017, the date of the refund claim. All of appellant's payments fell outside this 12-month period. We have no authority under R&TC section 19306 to grant appellant's refund claim with respect to any payments made because they fall outside the time authorized by the Legislature to file a claim for refund therefor.

With respect to appellant's contention that the four-year statute of limitations never began running because there was no due date for decedent to file a 2011 return, we must adhere to the statutory language. R&TC section 19306(a) provides that the applicable period is "four years from the last day prescribed for filing the return." The last day prescribed for an individual, trust, or estate reporting on a calendar year basis to file a 2011 income tax return was April 15, 2012. (See, e.g., *Radioshack Corp. v. United States* (2009) 566 F.3d. 1358, 1362 [federal statute of limitations, which expires three years after the due date to file a return when no return is filed, applies "whether or not a return is required"].) Appellant's January 10, 2017 refund claim is untimely, on this basis, because it is more than four years past this date. Furthermore, although appellant contends that the IRS accepted a claim for refund as timely under the federal provision (Internal Revenue Code (IRC) section 6511) and refunded the overpayment, California law does not conform to federal law on the running of the statute of limitations to file a claim for refund in the context of a late-filed return, and we are required to apply California law.⁸

Extended statute of limitations in the case of a final federal determination

If the IRS makes a change or correction to any item of gross income or deduction, the taxpayer must report the federal change to FTB within six months after the date it becomes final.

⁸ Under California law, the applicable statute runs from the due date prescribed for filing the return. (R&TC, § 19306(a).) Under federal law, the applicable statute runs from the later of the date actually filed or the due date. (IRC, §§ 6511, subd. (a), 6513, subd. (a).) As relevant, federal law was changed in 1957 to allow the limitations period to run from the date the return was actually filed, if later than the due date. (H.R. 775, 85th Cong. 1st Sess. § 71 (1957); see *Domtar Newsprint Sales Ltd. v. United States* (1970) 435 F.2d 563, 567.)

(R&TC, § 18622(a).) “If a change or correction is made or allowed by the [IRS], a claim for credit or refund resulting from the adjustment may be filed by the taxpayer within two years from the date of the final federal determination (as defined in Section 18622), or within the period provided in Section 19306 . . . whichever period expires later.” (R&TC, § 19311(a)(1).) A final federal determination is an assessment made pursuant to IRC section 6203, and the date of a final federal determination is the date the IRS assesses the tax within the meaning of IRC section 6203 (which provides that the IRS shall record the liability of the taxpayer pursuant to the applicable rules and regulations). (R&TC, § 18622(d).) The taxes assessed pursuant to IRC section 6203 include: “Taxes shown on return – The [IRS] shall assess all taxes determined by the taxpayer.” (IRC, § 6201.) As relevant here, Treasury Regulation section 301.6203-1 provides that the “amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown.” The IRS considers a taxpayer’s literal account transcript (referred to as the Individual Master File transcript) or plain-language account transcript (referred to as the IRS account transcript) as proof of the final federal determination within the meaning of IRC section 6203. (Rev. Rul. 2007-21 (Mar. 16, 2007).)

FTB’s sole contention here is that appellant cannot claim the benefit of the expanded statute of limitations because the IRS did not accept the federal tax return filed under the name of the decedent. Instead, because the IRS accepted this as a return filed for decedent’s trust or estate, the decedent’s IRS account transcript reflects that no return was filed and, as such, there is no final federal determination (or federal change) shown on the decedent’s IRS account transcript for 2011. We find this argument unpersuasive.

Appellant submitted a cover letter with the decedent’s 2011 tax return filed with FTB, dated June 9, 2015. The cover letter states that the decedent passed away during the prior year in 2010, that Geraldine Fredericks was the executor for the decedent’s *estate*, and that the 2011 return attached to the cover letter was being filed to report income attributed to the decedent’s *trust*. A tax return for a deceased individual is only required to report income earned up until the date of death, as such, a 2011 individual income tax return would have been improper to report income for an individual who passed away in 2010. (See R&TC, §§ 18505.3, 18501.) Under these facts, we find that appellant clearly intended to file a Form 541 (for an estate or trust), as opposed to a Form 540 (for an individual), and we find that appellant clearly conveyed this intent in the cover letter to FTB at the time the return was filed. Consistent with our finding, we note

that the IRS honored appellant's intent under similar circumstances for the same tax year and accepted the federal filing as a Form 1041 (for an estate or trust), as opposed to a Form 1040 (for an individual). In summary, we believe it appropriate, under the circumstances, to look to whether there was a final federal determination under the IRS account history for the estate or trust, for purposes of applying the expanded statute of limitations set forth in R&TC section 19311.

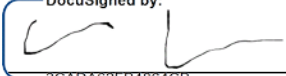
According to the IRS account transcript for the trust or estate, the IRS assessed the tax on June 12, 2015, and deleted the tax on March 20, 2017. It is undisputed that the 2011 amended individual income tax return, Form 540, which FTB accepted as a claim for refund for the amounts at issue, was filed on January 10, 2017 (the estate or trust's Form 541 was attached to the amended Form 540, along with an explanation for the overpayment). This is within two years of the "final federal determination" of June 12, 2015 (i.e., the date the tax was assessed within the meaning of IRC section 6203). The IRS subsequently made a federal change to delete this assessment in its entirety, which was the same result required for the state tax return. Under these facts, we find that appellant's claim for refund is timely because it was filed within two years of the federal change as reflected on the estate or trust's IRS account transcript. Furthermore, FTB does not dispute the amount of the overpayment (to the contrary, this amount is reflected as a credit balance on the decedent's account with FTB). Therefore, we grant appellant's claim for refund for the entire amount claimed.

HOLDING

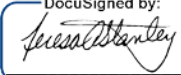
A claim for refund was timely filed for the tax year at issue.

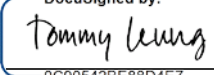
DISPOSITION

FTB's action for the 2011 tax year is reversed, and the refund claim is granted in its entirety.

DocuSigned by:

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Andrew J. Kwee
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Tommy Leung
Administrative Law Judge