

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
CRAIG P. WOOD

) OTA Case No. 18053097
)
) Date Issued: September 17, 2019
)
)
)

OPINION

Representing the Parties:

For Appellant: Craig P. Wood

For Respondent: Gi Nam, Tax Counsel

For Office of Tax Appeals: Andrea Long, Tax Counsel

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Craig P. Wood (appellant) appeals an action by the respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,683.84 for the 2011 taxable year.¹

Appellant waived his right to an oral hearing; therefore, we decide the matter based on the written record.

ISSUES

1. Is appellant’s claim for refund of penalties and interest paid for the 2011 taxable year barred by the statute of limitations?
2. If appellant’s claim is not barred by the statute of limitations, does the evidence establish that appellant’s failure to timely pay the tax liability for the 2011 taxable year was due to reasonable cause and not to willful neglect?

¹This is the amount of the refund claim listed on the FTB’s January 30, 2018 letter denying appellant’s refund claim for the 2011 taxable year. According to the FTB, the refund claim amount consists of a late-payment penalty of \$5,259.65 and a \$424.19 penalty for underpayment of estimated tax. Appellant asserts throughout his briefing that he is also appealing the FTB’s denial of a claim for refund for the 2012 tax year. However, the year at issue acknowledged by the Office of Tax Appeals (OTA) is 2011, and the parties have provided no evidence to show that appellant fully paid the 2012 tax liability and filed a claim for refund, or that the FTB denied a valid claim for refund for the 2012 taxable year.

3. If appellant's claim is not barred by the statute of limitations, should the penalty for appellant's underpayment of estimated tax be abated?

FACTUAL FINDINGS

1. Appellant timely filed his 2011 California Resident Income Tax Return, reporting no withholding or estimated tax payments, on July 11, 2012, which was within the extension period allowed for filing returns (but not for payment of taxes due). He reported California adjusted gross income of \$406,718, less itemized deductions of \$61,761, for a taxable income of \$344,957 and a total tax of \$28,389. Appellant also self-imposed an underpayment of estimated tax penalty of \$424, and reported a total amount due of \$28,813. Because appellant did not timely pay his 2011 taxes by the April 15, 2012 due date,² the FTB imposed a \$5,259.65 late-payment penalty.
2. Appellant paid his 2011 balance due by making a series of installment payments (and a credit transfer) beginning on January 15, 2014, and ending with the last payment on March 16, 2015.
3. On December 4, 2017, the FTB received appellant's claim for refund dated November 27, 2017.
4. On January 30, 2018, the FTB denied appellant's claim for refund of \$5,683.84 for the 2011 taxable year because appellant did not demonstrate reasonable cause.
5. This timely appeal followed.

DISCUSSION

Issue 1 - Is appellant's claim for refund of penalties and interest paid for the 2011 taxable year barred by the statute of limitations?

R&TC 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 R&TC 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 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 language of the statute is explicit and must be strictly construed. (*Appeal of*

² Because April 15, 2012, was a Sunday, payment by the following business day would have been considered timely.

Michael and Antha L. Avril (78-SBE-072) 1978 WL 3545.) The taxpayer has the burden of proof to show that he is entitled to a refund. (*Appeal of Estate of Barbara D. Gillespie*, 2018-OTA-052P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars him from doing so at a later date. (*Appeal of Earl and Marion Matthiessen* (85-SBE-077) 1985 WL 15856.) Federal courts have stated that fixed deadlines may appear harsh because such deadlines can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223 [citing *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].)

There is no dispute that appellant filed his 2011 return on July 11, 2012, and did not file his refund claim within four years of that date, or by July 11, 2016. Consequently, only payments made within one year prior to the date when he filed his refund claim fall within the refund statute of limitations set forth in R&TC section 19306(a). Appellant made his most recent payment on his 2011 tax account on March 16, 2015. Thus, to be timely, the statute of limitations required appellant to file his claim for refund by March 16, 2016. Appellant did not file his claim for refund until over a year and a half after the statute of limitations expired.

Appellant argues that his claim cannot be barred because the FTB consolidated his 2011 and 2012 tax liabilities into one installment payment agreement (IPA), and the FTB never informed him how it would apply his payments (i.e., to principal, penalties or interest) or to which tax year it would apply them. In essence, appellant asserts that he had no notice regarding when the one-year statute of limitations would begin to run and that he reasonably believed that the statute of limitations would begin to run when he made the final payments for 2012. On that basis, appellant urges us to find that the statute of limitations will not begin to run until his final payment on the liabilities covered by the IPA.³

There is no legal authority or factual basis for appellant's argument that consolidation of taxable years' balances for the purpose of an IPA changes the application of the statute of limitation under these facts. A taxpayer must first pay a disputed amount and then follow the statutory procedures for recovery. (*Shiseido Cosmetics (America) Ltd. v. Franchise Tax Bd.* (1991) 235 Cal.App.3d 478, 486.) The FTB does not have a duty to inform a taxpayer about an overpayment or the statute of limitations. (*Appeal of Marshall T. and Arlene W. Gleason* (86-

³There was a substantial liability remaining when appellant filed his opening brief in this appeal.

SBE-113) 1986 WL 22735; *Appeal of Earl and Marion Matthiessen, supra*; *Appeal of F. D. Shagets* (82-SBE-170) 1982 WL 11847.) It was appellant's responsibility to know when the statute of limitations began to run and when it would expire, and there is no evidence that the FTB did anything to thwart such efforts. Ignorance or a misunderstanding of California's tax law does not excuse a failure to follow the law. (*Appeal of F. D. Shagets, supra*; *Appeal of Tolbert D. Spradlin* (75-SBE-010) 1975 WL 3271.)

Furthermore, appellant's argument regarding application of payments is unpersuasive. Absent instructions from the taxpayer, the FTB may apply the installment payments in any manner it wishes. (Cal. Civ. Code, § 1479; *Appeal of First Investment Service Co.* (73-SBE-037) 1973 WL 2769.) The FTB chose to follow its customary practice of applying the installment payments to the earliest tax year. As a result, appellant satisfied his liabilities in chronological order. The FTB applied payments to the 2010 liability, which was satisfied before the later liabilities. The FTB next applied payments to satisfy the 2011 tax liability, with a final payment on March 16, 2015. Consequently, the refund claim needed to be filed by March 16, 2016, to be timely as to the last of the payments at issue.⁴ Finally, although the FTB was not required to give notice to appellant regarding application of the payments, it did send regular notices to him. These showed that his payments were being applied to the earliest tax year first, and a notice dated July 7, 2015, indicated that the 2011 liability had been paid in full.

Based on the evidence, we conclude that appellant's claim for refund of penalties and interest paid for the 2011 taxable year is barred by the statute of limitations. As this conclusion is dispositive of this appeal, we do not reach the issues identified as 2 and 3, above.


⁴ Appellant could have filed his claim before he paid the 2011 liability in full. (R&TC, § 19322.1.) A premature claim tolls the statute of limitations, but for other purposes the claim is deemed filed on the date the tax liability is paid in full, though there can be no refund for payments made more than seven years before that date.

HOLDING


The statute of limitations bars appellant's claim for refund of penalties and interest paid for the 2011 taxable year.

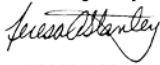
DISPOSITION

The FTB's action denying appellant's claim for refund or credit for the 2011 taxable year is sustained.

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Michael F. Geary
Administrative Law Judge

We concur:

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Richard Tay
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge