

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
JOANN IVEY

) OTA Case No. 18011125
)
) Date Issued: October 15, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Tim Treichel, Tax Counsel III,
Tax Appeals Assistance Program

For Respondent: Mira Patel, Tax Counsel

For Office of Tax Appeals: Mai Tran, Tax Counsel IV

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Joann Ivey (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund for the 2000 through 2008 tax years.¹ This matter is being decided based on the written record because appellant waived the right to an oral hearing.

ISSUE

Whether appellant timely filed claims for refund for the 2000 through 2008 tax years.

FACTUAL FINDINGS

1. Appellant, a California resident, retired in 1996.
2. FTB has no record that appellant paid state income tax or filed a state income tax return for tax years 2000, 2001, 2002, 2003, or 2005. FTB also has no record to confirm whether, if any returns were filed, it ultimately destroyed those returns pursuant to FTB’s

¹ Appellant filed an appeal for the 2000 through 2011 tax years. On appeal, FTB conceded the 2009, 2010, and 2011 tax years. Thereafter, the parties agreed to bifurcate the matter into two separate appeals and dismiss the appeal covering the 2009 to 2011 tax years. We do not discuss the dismissed matter further. The following amounts are at issue: \$660 for the 2000 tax year; \$755 for the 2001 tax year; \$764 for the 2002 tax year; \$834 for the 2003 tax year; \$1,040 for 2004; \$1,044 for 2005; \$1,139 for 2006; \$940 for 2007; and \$1,010 for 2008.

record retention policy, which provides for the destruction of materials that are no longer required to be maintained pursuant to R&TC section 19530.

3. Appellant filed state income tax returns for the 2004, 2006, 2007, and 2008 tax years as follows:
 - Appellant late-filed a 2004 return on November 29, 2007. FTB received payments totaling \$583.20, beginning on April 4, 2008, and ending on September 3, 2009. Appellant's September 3, 2009 payment was for \$33.20.
 - Appellant timely filed a 2006 return on April 15, 2007. She reported a \$437 tax liability and made a payment of \$456 with the return.
 - Appellant timely filed a 2007 return on April 15, 2008, and reported a \$248 tax liability. FTB imposed late payment and estimated tax penalties. Appellant made a series of payments totaling \$527.16, from April 6, 2009 to July 6, 2010. The July 6, 2010 payment was for \$10.36.
 - Appellant timely filed a 2008 return on April 15, 2009. Appellant reported a \$322 tax liability, \$9 withholding, and \$313 tax owed. FTB imposed late payment and estimated tax penalties. Appellant made payments totaling \$409.97, between July 6, 2010, and March 3, 2011. The March 3, 2011 payment was for \$20.33.
4. On May 15, 2017, appellant filed claims for refund for allegedly reporting nontaxable annuity payments as taxable during the 2000 through 2008 tax years.
5. By Notices of Action (NOA) dated June 12, 2017, FTB denied all of the claims as untimely. This timely appeal followed.

DISCUSSION

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(a).) The taxpayer has the burden of proof in showing entitlement to a refund and that the claim is timely. (*Appeal of Estate of Barbara D. Gillespie*, 2018-OTA-052P.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (*United States v. Brockamp* (1997) 519 U.S. 347 [no intent to apply equitable tolling in a federal tax statute of limitations].) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Michael and Antha L. Avril* (78-SBE-072) 1978 WL 3545.) A taxpayer's untimely filing of a claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*Appeal of Earl and Marion Matthiessen* (85-SBE-077) 1985 WL 15856; *United States v. Dalm* (1990) 494 U.S. 596.)

Here, appellant filed claims for refund on May 15, 2017, and none of appellant's refund claims were timely filed within either four years from the date the return was timely filed or the due date of the return. The most recently filed return was her 2008 tax return, which was filed on April 15, 2009. Thus, the four-year statute of limitations expired April 15, 2013, at the very latest (in the case of 2008). Furthermore, appellant's most recent payment covered by the refund claim was made on March 3, 2011. As such, the one-year statute of limitations would have expired on March 3, 2012, at the very latest (in the case of that final payment).

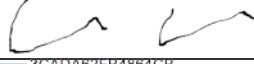
Although appellant contends that she made monthly tax payments of \$50 from April 11, 2016, through May 10, 2017, based on FTB's records, FTB applied those payments towards appellant's 2012 tax liability, which is not at issue in this appeal. Appellant also contends that the untimeliness of her claims was due to her continued reliance on the erroneous advice of her former tax preparer, a family friend. Unfortunately, there is no basis to extend the statute of limitations on these grounds. As such, all of appellant's claims for refund are barred by the statute of limitations, and we need not address the substantive merits of her claims.

HOLDING

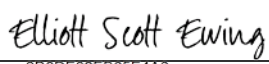
Appellant's claims for refund for the 2000 through 2008 tax years are untimely.

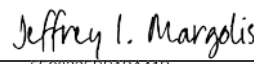
DISPOSITION

We sustain FTB's denial of appellant's claims for refund for 2000 through 2008.

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Andrew J. Kwee
Administrative Law Judge

We concur:

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Elliott Scott Ewing
Administrative Law Judge

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Jeffrey I. Margolis
Administrative Law Judge