

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18093806
JONATHAN WARYCHA)
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OPINION

Representing the Parties:

For Appellant: Jonathan Warycha
For Respondent: Christopher Tuttle, Tax Counsel
Maria Brosterhous, Tax Counsel IV
For Office of Tax Appeals: William J. Stafford, Tax Counsel III

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19324, appellant Jonathan Warycha appeals respondent Franchise Tax Board’s action in denying appellant’s claim for refund of \$2,483.18¹ for the 2013 tax year.

Administrative Law Judges Douglas Bramhall, Andrew J. Kwee, and Alberto T. Rosas held an oral hearing in this matter in Los Angeles, California, on September 19, 2019. At the conclusion of the hearing, we closed the record and submitted this matter for decision.

ISSUE

Whether appellant has demonstrated that he filed a timely claim for refund for the 2013 tax year.

¹ The 2013 California income tax return listed a refund amount of \$2,482. Respondent accepted a claim for refund in the amount of \$2,483.18. The difference of \$1.18 is immaterial for purposes of this appeal. As discussed below, respondent stated that it will refund \$121.18 because appellant may not have received notice of levy prior to respondent’s collection of \$121.18 on May 10, 2017. Accordingly, the amount at issue in this appeal is \$2,362.00 (i.e., \$2,483.18 - \$121.18 = \$2,362.00).

FACTUAL FINDINGS

1. Appellant's 2013 California return was due on or before April 15, 2014.
2. In 2017, respondent received the following payment/collection amounts totaling \$2,055.23: \$121.18 (on May 10), \$1,128.43 (on June 13), \$100.69 (August 14), and \$704.93 (November 14).
3. Respondent's records show it received a handwritten 2013 California return on May 14, 2018, which appellant signed and was dated April 23, 2018 (Return One). The return reported tax due of \$3,471 and an overpayment of \$2,482.
4. During processing of Return One, respondent increased appellant's tax due to \$3,591 and reduced the overpayment to \$2,362. Because of the various payment/collection amounts made in 2017 (totaling \$2,055.23), the overpayment balance increased from \$2,362 to \$4,417.23.
5. On May 31, 2018, respondent transferred \$225.40 of the overpayment to appellant's balance due for his 2015 tax year, posted \$3.60 in accrued interest, and sent appellant a refund of \$1,712.25.
6. Respondent treated Return One as a claim for refund filed on May 14, 2018. In July 2018, respondent sent appellant a notice stating that a refund balance of \$2,483.18 was barred by the statute of limitations. In response, appellant filed this appeal.

DISCUSSION

The last day to file a claim for refund is the later of: (1) four years from the date the return was 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. (R&TC, § 19306.) The statute of limitations is "strictly construed and . . . 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 Matthiessen* (85 SBE-077) 1985 WL 15856.) It is a taxpayer's responsibility to file a claim for refund within the timeframe prescribed by law. (*Id.*) Federal courts have stated that fixed deadlines may appear harsh because they 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 [citing *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].)

Appellant testified that he mailed his 2013 California return to respondent on April 11, 2018, and he provided a copy of a handwritten return dated April 11, 2018 (Return Two). He testified that when respondent notified him that they did not receive this return, he faxed it to respondent on May 30, 2018. But there is no evidence to corroborate that appellant did in fact mail Return Two on April 11, 2018. The evidence shows that respondent received Return One on May 14, 2018, two weeks prior to when appellant said he faxed it. Moreover, Return One was dated April 23, 2018.

In the evidence before us, we have two 2013 California returns, both are handwritten, but one is signed April 23, 2018 (Return One), while the other is signed April 11, 2018 (Return Two). When questioned at the oral hearing, appellant was unable explain the discrepancy or the reason for the two separate dates. Although he testified that he mailed Return Two on April 11, 2018, there is no evidence to corroborate this. Furthermore, appellant does not explain how respondent received Return One (a 2013 return signed April 23) on May 14, 2018, when it is his testimony that he faxed his originally filed return on May 30.

Appellant's 2013 California return was due on April 15, 2014; however, respondent's records show that on May 14, 2018, respondent received the 2013 return dated April 23, 2018 (Return One). Respondent received this return approximately one month after the four-year statute of limitations for claiming refunds had expired. As to the one-year statute of limitations, respondent stated that it has already refunded or will refund² all of the amounts respondent received from May 15, 2017, through May 14, 2018—that is, the amounts received within one year of respondent's receipt of Return One. Furthermore, respondent argues that the remaining amount at issue (i.e., \$2,362) is from appellant's 2013 withholding credit, which by operation of law is treated as a credit/payment received on April 15, 2014, and is therefore barred by the statute of limitations. We agree.

Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Here, there are two 2013 tax returns with different dates in the signature block. Based on the conflicting evidence and unsupported testimony, appellant did not show that he actually mailed the 2013 California return to respondent on April 11, 2018 (Return Two). Moreover, his testimony is contradicted by the fact that his 2013

² While respondent has already refunded \$1,712.25, respondent stated that it will refund an additional \$121.18 because appellant may not have received notice of levy prior to respondent's collection of \$121.18 on May 10, 2017.

return (Return One), though received on May 14, 2018, was dated April 23, 2018. Based on the totality of the evidence, it is more likely than not that appellant’s 2013 return (Return One) was signed on April 23, 2018, and received by respondent on May 14, 2018. Thus, it is not a timely refund claim under the four-year statute of limitations.

HOLDING

Appellant has failed to demonstrate error with respondent’s denial of his claim for refund.

DISPOSITION

Respondent agreed to refund an additional \$121.18. In all other respects, we sustain respondent’s denial of appellant’s claim for refund.

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Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

We concur:

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Joczielle Cruz
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Joczielle Cruz
Staff Service Analyst, on behalf of
Douglas Bramhall
Administrative Law Judge

DocuSigned by:
Andrew J. Kwee
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Andrew J. Kwee
Administrative Law Judge

Date Issued: 12/24/2019