

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18113994
GAIL A. BROWN)
) Date Issued: December 12, 2019
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OPINION

Representing the Parties:

For Appellant: Denise A. Powers
For Respondent: Katlyn K. Holmes, Graduate Student Assistant
For Office of Tax Appeals: William J. Stafford, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Gail A. Brown (appellant) appeals the action of respondent Franchise Tax Board (FTB) in denying appellant’s claim for refund of \$8,488.90 for the 2012 tax year.

Appellant waived the right to an oral hearing and therefore the matter is decided based on the written record.

ISSUE

Whether appellant has demonstrated that she filed a timely claim for refund.

FACTUAL FINDINGS

1. Appellant did not file a 2012 California income tax return.
2. Through its Integrated Non-Filer Compliance Program, FTB obtained computer information from the Internal Revenue Service (IRS), as set forth on a federal Form 1098

- from Bank of America, N.A. (Bank of America), that appellant paid mortgage interest for the 2012 tax year in the amount of \$18,373 for a property located in California.¹
3. For the 2012 tax year, FTB estimated appellant's income to be \$110,238 by multiplying the amount of reported mortgage interest (\$18,373) by six (i.e., $\$18,373 \times 6 = \$110,238$).
 4. FTB issued a notice dated May 26, 2015, requesting that appellant file a return or explain why no return was required. The notice was sent to a post office box (P.O. Box) address in Rancho Cordova, California. The appeal record contains no evidence that the notice was returned to FTB as undelivered.
 5. When appellant did not respond to the notice, FTB issued a Notice of Proposed Assessment (NPA) dated July 27, 2015, based on the information received from Bank of America and FTB's estimate of appellant's income therefrom. The NPA set forth a tax of \$6,046 and a late-filing penalty of \$1,511.50, plus applicable interest. The NPA was sent to a P.O. Box address in Rancho Cordova, California. The appeal record contains no evidence that the NPA was returned to FTB as undelivered.
 6. Appellant failed to file a timely protest, and the NPA became a final assessment.
 7. Subsequently, FTB issued an Income Tax Due Notice on December 8, 2015, and a Final Notice Before Levy and Lien on January 13, 2016. Both notices were sent to a P.O. Box address in Rancho Cordova, California, and provided information to appellant regarding her 2012 tax year balance.
 8. On April 5, 2016, FTB initiated a collection action by issuing an Order to Withhold to Sacramento Credit Union.
 9. In response to the Order to Withhold, FTB recorded a payment of \$8,488.90 on May 3, 2016.
 10. On August 28, 2018, FTB received additional information from appellant's representative via facsimile. On September 18, 2018, FTB received a letter from appellant with additional income information. FTB treated the letter (and the information therein) as a claim for refund.
 11. In response, FTB sent appellant a letter dated October 5, 2018, notifying appellant that FTB had abated the amounts assessed in the NPA for the 2012 tax year. The abatement

¹ Documentation in the record does not provide the residence address; however, appellant does not dispute that it was a California property.

created a credit balance of \$8,488.90. However, FTB stated that appellant's claim for refund was denied because the overpayment was barred by the statute of limitations.

12. In response, appellant filed this timely appeal.

DISCUSSION

The general statute of limitations for filing a refund claim is set forth in R&TC section 19306. Under that section, 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.

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 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; *Estate of Gillespie* (2018-OTA-052P).) 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, 222 [citing *United States v. Locke* (1985) 471 U.S. 84; *United States v. Boyle* (1985) 469 U.S. 241, 249].)

We must determine whether appellant has demonstrated that she filed a timely claim for refund for the 2012 tax year. Appellant asserts the NPA for the 2012 tax year was incorrect and that she was not in the United States when the notices were mailed to her. Attached to appellant’s appeal letter is a letter from the IRS dated December 13, 2018, that only concerns appellant’s 2013 tax year. This IRS letter, however, is not relevant to this appeal, which only concerns the 2012 tax year.

Because appellant filed no return, the first four-year statute of limitations period is inapplicable. As for the second four-year statute of limitations period, appellant’s 2012 return was due on April 15, 2013, and four years from that date was April 15, 2017. Therefore, appellant’s claim for refund, filed on September 18, 2018, is barred under the four-year statute of limitations.

As for the one-year statute of limitations, the payment/collection for appellant’s 2012 tax year was received on May 3, 2016. Thus, the one-year statute of limitations period for the 2012

tax year expired on May 3, 2017. Accordingly, appellant’s claim for refund for the 2012 tax year, dated September 18, 2018, is barred under the one-year statute of limitations. FTB considered appellant’s September 18, 2018 letter to be a claim for refund, and appellant has not provided any evidence to the contrary. This date falls outside all three of the statute of limitations periods.

HOLDING

Appellant failed to demonstrate that she filed a timely claim for refund for the 2012 tax year.

DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

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Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

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