

- Form 2555, Foreign Earned Income. Appellant reported a physical presence outside of the U.S. for 366 days during 2012.
2. The U.S. Army issued appellant a Letter of Authorization (LOA), the official document necessary to enable a contractor employee to travel to and from operation sites, dated October 24, 2012. The LOA states that appellant's deployment period was to start on October 27, 2012, and to end by October 1, 2014.
 3. FTB accepted the return and issued a refund of \$8,299 to appellant.
 4. Appellant filed an amended return for 2012 tax year on October 1, 2018, changing her filing status from California part-year resident, to nonresident. Appellant sought an additional refund of \$7,715.
 5. FTB treated the amended return as a claim for refund and accepted the return as filed. However, FTB did not issue a refund because it determined that the claim for refund had been filed after the statute of limitations had expired.
 6. On or about February 12, 2019, appellant filed another claim for refund for the year at issue on Form 2917, based upon the same arguments raised in her previously filed amended return. FTB denied the claim.¹
 7. This timely appeal followed.

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 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 [the taxpayer] from doing so at a later date.” (*Appeal of Matthiessen* (85 SBE-077) 1985 WL 15856; *Appeal of Estate of*

¹ Because this claim for refund was filed after appellant’s amended return (which was treated as a claim for refund by FTB), our analysis of the timeliness of appellant’s claim is based upon the earlier filed document, appellant’s amended return.

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 filed a timely claim for refund for the 2012 tax year. Appellant's 2012 amended California tax return was filed on October 1, 2018, which was treated as appellant's claim for refund. As for the four-year statute of limitations period, appellant's original 2012 tax return was filed February 22, 2013. Thus, the four-year statute of limitations, without any applicable extensions, expired on April 15, 2017, more than one year before the claim for refund was filed.

However, a taxpayer may qualify for special provisions for extended deadlines to file or pay taxes if they served in the Armed Forces in a combat zone or a contingency operation. (R&TC, § 18571; Internal Revenue Code (IRC), § 7508). During the tax year at issue, Pakistan was certified by the Department of Defense for combat zone benefits due to its direct support of military operations in the Afghanistan combat zone.² Generally, the deadlines for performing certain actions applicable to a taxpayer's taxes are extended for the period of his/her service in the combat zone, plus 180 days after his/her last day in the combat zone. (R&TC, § 18571; IRC, § 7508).³ FTB contends that appellant returned from the combat zone on February 10, 2013, which is the date stated on appellant's original return. Since this date is before the filing deadline of April 15, 2013, FTB only added 180 days to the deadline for appellant to file a claim for refund. The amended return/claim for refund was filed almost 5.5 years later, on October 1, 2018. However, appellant testified at the hearing that she in fact returned closer to October 1, 2014. Additionally, appellant's LOA, the official document necessary to enable a contractor employee to travel to and from operation sites, states that appellant's deployment

² See Executive Order No. 13239, IRS Combat Zones Approved for Tax Benefits, 66 Fed.Reg. No. 241 (Dec. 14, 2001).

³ See IRS Publication 3 (2012), Armed Forces' Tax Guide, <<https://www.irs.gov/pub/irs-prior/p3--2012.pdf>>, p. 9, accessed Mar. 2, 2020.

period started October 27, 2012, and her deployment period ended October 1, 2014.⁴ Using this date and applying the special provisions for extended deadlines, appellant could add 532 days (the time in the combat zone between April 15, 2013 and October 1, 2014), plus 180 days, for a total of 712 days, to the deadline to file a claim for refund.⁵ As discussed above, the four-year statute of limitations expired on April 15, 2017. However, under the combat zone special provisions for extended deadlines, appellant would be able to add 712 days to this deadline, or March 28, 2019, to file her claim for refund. We find that appellant returned from deployment on October 1, 2014, as she testified at the hearing and as stated on the LOA. Therefore, appellant's claim for refund, filed on October 1, 2018, is not barred under the four-year statute of limitations, as it falls under the combat zone special provisions for extended deadlines pursuant to R&TC section 18571 and IRC section 7508.

⁴ Appellant testified that the contract end date (September 15, 2016) on the LOA was not the date that she returned from deployment, but rather the date she had to renew her contract with MEP.

⁵ R&TC, § 18571; IRC, § 7508; see IRS Publication 3 (2012), Armed Forces' Tax Guide, <https://www.irs.gov/pub/irs-prior/p3--2012.pdf>, p. 24, example 2, accessed Mar. 2, 2020.

HOLDING

Appellant’s claim for refund for the 2012 tax year is not barred by the statute of limitations, as it was timely filed after applying the combat zone special provisions for extended deadlines under R&TC section 18571 and IRC section 7508.

DISPOSITION

FTB’s denial of appellant’s claim for refund is overruled, and appellant is entitled to a refund as sought in the amended return filed on October 1, 2018, for the 2012 tax year.

DocuSigned by:
Sara A Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Jeffrey I. Margolis
5E9822FBB1BA41B...
Jeffrey I. Margolis
Administrative Law Judge

DocuSigned by:
E. Ewing
2D8DE82EB65E4A6...
Elliott Scott Ewing
Administrative Law Judge

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