

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
R. JAQUES

) OTA Case No. 19064945
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OPINION

Representing the Parties:

For Appellant: Kevin Bradley, Tax Appeals Assistance Program (TAAP)¹
For Respondent: Christopher T. Tuttle, Counsel

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Jaques (appellant) appeals actions by Franchise Tax Board (respondent) denying appellant’s claims for refund of \$4,401.36 for the 2005 tax year and \$353.00 for the 2006 tax year.

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

ISSUE

Whether appellant’s claims for refund are barred by the statute of limitations.

FACTUAL FINDINGS

1. Appellant failed to timely file 2005 and 2006 tax year California returns.
2. Respondent obtained information that indicated appellant had tax return filing obligations for the 2005 and 2006 tax years and issued to appellant Notices of Proposed Assessment (NPAs) for the 2005 tax year, dated April 9, 2007, and for the 2006 tax year, dated October 13, 2009.

¹ Appellant filed her opening brief and is now represented by TAAP. A reply brief was not filed on behalf of appellant.

3. For both the 2005 and 2006 tax years, respondent proposed tax, a late filing penalty, a demand penalty, and a filing enforcement cost recovery fee, plus interest.
4. The NPAs went final and respondent initiated collection efforts. Various payments, credits and transfers followed, including intercepting appellant's 2015 and 2016 tax years federal tax refunds, as well as unclaimed property payments due to appellant from the California State Controller's Office.
5. On April 11, 2018, and April 13, 2018, appellant filed untimely original joint California returns for the 2005 and 2006 tax years, respectively (with appellant's former spouse). Respondent processed and accepted the returns as filed. This resulted in a credit of \$4,401.36 on appellant's 2005 tax year account and a credit of \$353 on appellant's 2006 tax year account.
6. Respondent then abated the late filing and demand penalties. Respondent did not issue appellant a refund of the credits for the 2005 and 2006 tax years because respondent determined that the refunds requested by the returns were barred by the statute of limitations.
7. On January 25, 2019, March 1, 2019, and March 15, 2019, appellant filed written claims for refund for the credit amounts on both tax years. Respondent conceded some of the claimed amounts were timely within the one-year statute of limitations and applied those amounts to an unrelated outstanding liability for another tax year. Respondent then denied the remaining amounts on the grounds that the claims were untimely filed.
8. Appellant then timely filed this appeal.

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 shall 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 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 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 Matthiessen* (85-SBE-077) 1985 WL 15856; *U.S. v. Dalm* (1990) 494 U.S. 596.)

In the instant appeal, appellant filed untimely tax returns for the 2005 and 2006 tax years in April 2018. These returns generated overpayments, which respondent ultimately accepted as filed. However, the amounts could not be refunded because the returns, properly treated as claims for refund, were filed well outside the four-year statute of limitations, which began to run on the original due date of the returns – i.e., April 15, 2006, for the 2005 tax year, and April 15, 2007, for the 2006 tax year. Thus, the four-year statute of limitations for the 2005 and 2006 tax years expired on April 15, 2010, and April 15, 2011, respectively, and appellant's claims for refund filed on April 11, 2018, and April 13, 2018, were therefore barred by the four-year statute of limitations.

Appellant also filed written claims for refund for the 2005 and 2006 tax years on January 25, 2019, March 1, 2019, and March 15, 2019. Respondent properly treated the claims for refund with respect to some of the payments² as not time-barred but did not refund these monies. Instead, respondent applied the amounts to appellant's now former spouse's outstanding tax liability, as the monies were community property because they were paid in and reported along with the joint returns for the 2005 and 2006 tax years.³ With respect to the remaining payments included in appellant's claims for refund that respondent determined were time-barred under the statute of limitations, for the same reasons discussed above, none of appellant's claims were timely filed within four years from the due dates of the returns.

² These include Earnings Withholding Order (EWO) payments of \$3.96 on April 21, 2017, \$49.68 on May 26, 2017, \$148.61 on August 15, 2017, a credit of \$39.03 on April 21, 2018, from appellant's 2017 California return, and unclaimed property payments totaling \$103.04, dated June 14, 2018.

³ R&TC section 19301(b) states that in the case of a joint return, "the amount of the overpayment may be credited against the amount then due from both taxpayers and the balance shall be refunded to both taxpayers in the names under which the return was paid."

Further, under the one-year statute of limitations, the remaining five payments in question⁴ were applied to appellant's tax liability on March 2, 2016, November 15, 2016, February 7, 2017, February 23, 2017, and February 27, 2017. The one-year statute of limitations periods for these payments therefore expired between March 2, 2017, and February 27, 2018. Because appellant's three claims for refund for the 2005 and 2006 tax years were all filed in 2019, the one-year statute of limitations for refund of overpayments had also expired before these claims were filed. (R&TC, § 19306(a).) Thus, respondent's actions were correct with respect to those remaining payments.

HOLDING

Appellant's claims for refund are barred by the statute of limitations.

DISPOSITION

Respondent's actions are sustained.

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Elliott Scott Ewing
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Elliott Scott Ewing
Administrative Law Judge

We concur:

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Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

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

Date Issued: 7/8/2020

⁴ Treasury offsets of \$2,933 and \$383 were applied to appellant's liability on March 2, 2016, and February 27, 2017, respectively. EWO payments of \$86, \$147, and \$50, were received on November 15, 2016, February 7, 2017, and February 23, 2017, respectively.