

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
M. EVANS AND T. EVANS

) OTA Case No. 19125545
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OPINION

Representing the Parties:

For Appellants:

Robert C. Duncan, JD
Jessie Down, Enrolled Agent

For Respondent:

Bradley J. Coutinho, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Evans and T. Evans (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claims for refund of \$13,008, \$11,584, and \$4,879, respectively, for the 2009, 2010, and 2011 tax years.

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

ISSUES

1. Whether appellants have shown their claims for refund for the 2009 and 2010 tax years were filed within the applicable statute of limitations.
2. Whether appellants have shown they are entitled to a refund for the tax years at issue.

FACTUAL FINDINGS

1. Appellants filed their 2009 California Resident Income Tax Return (Form 540) on October 15, 2010, reporting a balance due.
2. FTB processed the return, revised the estimate tax payments based on the estimate tax payments reported, and imposed a late payment penalty and an estimate tax penalty for the 2009 tax year.

3. On October 15, 2013, appellants filed a second Form 540 for the 2009 tax year, which FTB treated as an amended return, reporting an overpayment. FTB processed the return and revised the penalties imposed, transferring the overpayment to appellants' 2012 tax year account.
4. Appellants filed their 2010 Form 540 on October 17, 2011, reporting a balance due.
5. FTB processed the return and adjusted the balance due based on the total tax and estimate tax payments appellants reported.
6. Appellants filed their 2011 Form 540 on October 15, 2012, reporting a balance due.
7. FTB processed the return and revised the estimate tax payments reported.
8. FTB received information from the Internal Revenue Service (IRS) indicating it made adjustments to appellants' 2009, 2010, and 2011 federal accounts, resulting in additional tax for each year. FTB made corresponding adjustments to appellants' 2009, 2010, and 2011 tax years. As a result, FTB issued Notices of Proposed Assessments (NPAs) dated April 28, 2016, for all tax years at issue. The NPAs went final without protest from appellants.
9. On August 30, 2016, appellants filed amended returns for the 2009, 2010, and 2011 tax years, reporting additional income based on federal and California adjustments. Appellants attached "Explanation of Changes" to the amended returns, stating that appellants had understated their expenses, filed the amended returns as protective claims for refund, and would amend the returns when the reconciliation was completed.
10. FTB treated the amended returns as claims for refund but did not accept the adjustments as reported. On October 14, 2019, FTB issued claim denial letters, stating that the business income or loss reported on a Schedule CA are generally the same for federal and state purposes and without further substantiation, appellants are not entitled to California adjustments for Schedule C.

11. Appellants paid the balance due on the 2009 tax year from a transfer of an overpayment from the 2015 tax year on October 21, 2016. Appellants paid the balance due on the 2010 tax year from a transfer of an overpayment from the 2015 and 2016 tax years, plus several payments made in October of 2017.
12. Appellants then filed this timely appeal.

DISCUSSION

Issue 1 - Whether appellants have shown their claims for refund for the 2009 and 2010 tax years were filed within the applicable statute of limitations.

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 Gillespie*, 2018-OTA-052P.)

R&TC section 19322.1(a) provides that a claim for refund of tax that is otherwise valid under R&TC section 19322, but is made before the full payment of the disputed tax has been made, shall be a claim only for purposes of tolling the statute of limitations. This informal claim for refund will be perfected and deemed filed on the date when the full payment of the tax is made. (R&TC, § 19322.1(a).) Perfected refund claims are claims for refund for amounts that have been paid in full. (FTB Notice 2003-5.)

For appellants, the four-year statute of limitations to claim a refund expired on October 15, 2014, for 2009, and on October 15, 2015, for 2010. Appellants' claims for refund for the 2009 and 2010 tax years were filed on August 30, 2016. Therefore, the 2009 and 2010 claims for refund were filed after the four-year timeframe set forth in R&TC section 19306.

However, appellants' claims for refund for 2009 and 2010 were timely pursuant to the tolling provisions set forth in R&TC section 19322.1. Appellants had a final liability as of June 26, 2016, when the NPAs for each tax year went final. Appellants filed claims for refund on August 30, 2016, prior to payments of the liabilities at issue. Appellants paid the balance due

on the 2009 tax year from a transfer of an overpayment from the 2015 tax year on October 21, 2016. Appellants paid the balance due on the 2010 tax year from a transfer of an overpayment from the 2015 and 2016 tax years, plus several payments made in October of 2017. Under these facts, appellants' amended returns acted as claims for the purpose of tolling the statute of limitations under 19322.1, and the claims became final once full payment of the liability was received. Therefore, the claims for refund for the 2009 and 2010 tax years were timely.

Issue 2 - Whether appellants have shown they are entitled to a refund for the tax years at issue.

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a deficiency assessment based on a federal audit report is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*)

For the 2009, 2010 and 2011 tax years, appellants reported additional income based on federal adjustments along with California adjustments for Schedule C, Business Income. Appellants claim to have understated their expenses and allocated commissions to different states. However, appellants have not substantiated their entitlement to the California adjustments. Usually, business income and expenses are the same at the federal and state level. Appellants have not provided any statutory provision that entitles them to an adjustment. Furthermore, appellants have conceded that they are full-year California residents for the tax years at issue, and therefore any apportionment of income or commissions is inappropriate. (R&TC, § 17041(a).)

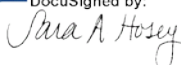
Here, FTB properly assessed additional tax based upon federal adjustments. Appellants have not presented any argument or evidence to show error in the federal adjustments or in FTB's determination based upon those adjustments for the 2009, 2010 and 2011 tax years.

HOLDINGS

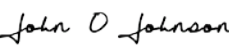
1. Appellants claims for refund for the 2009 and 2010 tax years were not barred by the applicable statute of limitations because each claim was properly tolled under R&TC section 19322.1.
2. Appellants have not shown they are entitled to a refund for the tax years at issue.


DISPOSITION

FTB's denials of the claims for refund are sustained.

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Sara A. Hosey
Administrative Law Judge

We concur:

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John O. Johnson
Administrative Law Judge

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Huy "Mike" Le
Administrative Law Judge

Date Issued: 8/26/2020