

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

V. BOBBA

) OTA Case No. 19034386
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)
)

OPINION

Representing the Parties:

For Appellant:

V. Bobba

For Respondent:

Meghan McEvelly, Tax Counsel III

J. MARGOLIS, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, V. Bobba (appellant) appeals an action by the respondent Franchise Tax Board (FTB) denying her claim for refund of \$254 of tax paid for 2015.

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

ISSUE

Whether appellant is entitled to file an amended return on a married filing separately basis after having previously filed on a married filing jointly basis.

FACTUAL FINDINGS

1. On June 5, 2017, appellant late-filed joint federal and state income tax returns for 2015 with her husband, who passed away in 2018. Appellant’s California return reported a total tax liability of \$34,350, withholdings of \$17,012, and a tax amount due of \$17,338, which was not paid with the return.
2. FTB imposed a late-filing penalty for 2015, interest, and a collection cost recovery fee, and it commenced enforcement efforts to collect the amount due. Eventually the amount

FTB claimed to be due was paid in full. In fact, FTB admitted in its opening brief that it had collected too much from appellant for 2015, and refunded \$3,358, plus interest, on June 15, 2020. FTB contends that there is no longer a balance due to or from appellant for 2015.

3. During 2017 and 2018, the IRS and FTB were attempting to collect unpaid taxes, penalties and interest due from appellant for other tax years as well. However, those tax years are not before us in this matter.
4. On or about December 6, 2018, appellant filed another 2015 California income tax return, this time on a married filing separately basis. The return sought a tax refund of \$254. FTB treated the return as a claim for refund and denied it on the ground that appellant was not entitled to change her filing status from married filing jointly to married filing separately.
5. Appellant timely filed this appeal from FTB’s notice of claim denial.¹

DISCUSSION

Except in limited circumstances that are not applicable here, California law requires that “an individual shall use the same filing status that he or she used on his or her federal income tax return filed for the same taxable year.” (R&TC, § 18521(a)(1).)

OTA has been provided with a copy of appellant’s federal account transcript for 2015. It shows that appellant filed her federal income tax return for 2015 on a married filing jointly basis. It also reflects that: the IRS imposed late-filing and late payment penalties for 2015; appellant submitted, and then withdrew, an offer in compromise; a bankruptcy “hold” was placed on the account and later withdrawn; a collection due process request was submitted and resolved (or withdrawn); and an innocent spouse claim was received. However, there is no indication that the IRS allowed appellant to change her filing status for 2015, or that it granted her any form of innocent spouse relief for that year. The burden of proof is on appellant (see *Dicon Fiberoptics, Inc. v. Franchise Tax Bd.* (2012) 53 Cal.4th 1227, 1235), and she has not satisfied her burden of proving that the IRS permitted her to change or filing status for 2015. Thus, she is not entitled to change her filing status for California tax purposes.

¹ Appellant’s appeal letter also referenced several other years. However, OTA advised the parties that it had no jurisdiction over those other years in this proceeding because appellant had not shown that FTB issued notices of action or denied claims for refund for those years or that appellant had submitted refund claims for those years, waited six months, and then deemed those claims denied prior to filing this appeal.

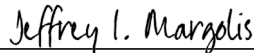
OTA held a conference call with the parties in this matter in which appellant expressed her desire that FTB would consider waiving various penalties that it had imposed for 2015. However, this proceeding is an appeal from FTB’s denial of appellant’s claim for refund, and our jurisdiction is limited to issues raised in the claim for refund. (R&TC, § 19322; see also *Atari Inc. v. State Bd. of Equalization* (1985) 170 Cal.App.3d 665, 672 [“The claim for refund delineates and restricts the issues to be considered in a taxpayer’s refund action.”].) Appellant’s claim for refund did not contest FTB’s imposition of penalties for 2015. Accordingly, we have no jurisdiction to consider whether any of the penalties imposed by FTB for 2015 may be waived.²

HOLDING

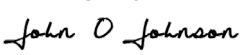
Appellant is not entitled to file an amended return on a married filing separately basis after having previously filed on a married filing jointly basis.

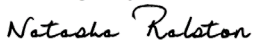
DISPOSITION

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

DocuSigned by:

Jeffrey I. Margolis
Administrative Law Judge

We concur:

DocuSigned by:

John O. Johnson
Administrative Law Judge

DocuSigned by:

Natasha Ralston
Administrative Law Judge

Date Issued: 1/5/2021

² We do note, however, that appellant’s federal account transcript reveals that the IRS has *not* waived the late-filing and late payment penalties it imposed with respect to appellant’s 2015 tax year.