

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19064905
D. MESSINA AND)
N. MESSINA)
_____)

OPINION

Representing the Parties:

For Appellants: Raymond Edwards, Partner

For Respondent: Leoangelo C. Cristobal, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Messina and N. Messina (appellants) appeal an action by Franchise Tax Board (respondent) denying appellants’ claim for refund of \$87,846 for the 2012 taxable year.

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

ISSUE

Whether appellants filed their claim for refund within the statute of limitations.

FACTUAL FINDINGS

1. Appellants filed their 2012 California personal income tax return (Form 540) by the extended October 15, 2013 due date. Appellants’ 2012 federal income tax return (Form 1040) was subsequently examined by the Internal Revenue Service (IRS); the IRS audit resulted in an increase to appellants’ 2012 federal taxable income and an assessment of additional tax.¹

¹ The United States Tax Court affirmed the increase to appellants’ taxable income and assessment of additional tax on October 30, 2017. (See *Messina v. Commissioner*, T.C. Memo. 2017-213, affd. (9th Cir. 2019) 799 Fed.Appx. 466.

2. On December 19, 2016, respondent received notification from the IRS regarding the adjustments made to appellants' 2012 Form 1040. Appellants did not notify respondent of the adjustments to their 2012 Form 1040.
3. On October 15, 2018, appellants filed an amended 2012 tax return (Form 540X), claiming a net operating loss (NOL) carryback from the 2014 taxable year; however, appellants did not include any adjustments related to the IRS's federal audit of their 2012 Form 1040. Respondent treated appellants' 2012 Form 540X as a claim for refund.
4. Respondent applied the IRS adjustments to appellants' 2012 tax return and offset them against the claimed 2014 NOL carryback, resulting in a reduced overpayment of \$3,917,² but with no additional tax due. Respondent denied appellants' claim for refund of the overpayment because it was untimely.

DISCUSSION

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.) Under certain circumstances, a return filed within the statute of limitations period described above which shows a credit for tax withholdings or estimated tax payments may be treated as a timely refund claim for the excess amount. (R&TC, § 19307.) Unlike federal law, California law does not have a special statute of limitations provision for NOL carrybacks. (Compare Internal Revenue Code, § 6511(d) with R&TC, § 19314.)

A federal claim for refund must be filed within the period authorized by statute and, as such, there is no equitable tolling of the statute of limitations for refund claims. (*See Cooper v. Commissioner* (3d Cir. 2013) 718 F.3d 216, 225, citing the "settled rule" established by *United States v. Brockamp* (1997) 519 U.S. 347.) Considering the mandatory language of R&TC section 19306, absent a grant of statutory authority, we similarly have no basis to grant a refund outside the statute of limitations. (R&TC, § 19306; *Appeal of Cervantes* (74-SBE-029) 1974 WL 2844.) Although there are some statutory exceptions, the law provides no basis to extend the statute of limitations for reasonable cause. (R&TC, § 19306.)

² Respondent subsequently increased the overpayment to \$42,197 due to federal/state differences.

Here, appellants' 2012 tax return was due, and the most recent payment was applied, on April 15, 2013. Appellants timely filed their tax return for the 2012 taxable year on October 15, 2013. Appellants filed an amended return for the 2012 taxable year on October 15, 2018. According to the R&TC section 19306 timeframes noted above, the latest date for appellants to have submitted their 2012 claim for refund would be October 15, 2017, four years after the date on which the tax return was timely filed on extension. The amended return, which was treated as appellants' claim for refund, does not fall within the four-year statute of limitations prescribed in R&TC section 19306 and was therefore untimely.

Appellants argue that R&TC section 19314 is an exception to the four-year statute of limitations as prescribed in R&TC section 19306. In relevant part, R&TC section 19314 provides a seven-year window for offsetting overpayments resulting from the transfer of a deduction between taxable years for the same taxpayer (see R&TC, § 19314(a)(1)); however, no refund for such an overpayment is allowed unless a claim for refund is filed within the statute of limitations provided in R&TC section 19306 (R&TC, § 19314(c)).

Since R&TC section 19314(c) disallows refunds unless the claim is made within the period set out in R&TC section 19306, appellants' claim for refund is barred as it was filed on October 15, 2018, which is beyond the October 15, 2017, deadline for filing their 2012 refund claim. Appellants are therefore not eligible for a refund under R&TC section 19314.

HOLDING

Appellants have not shown they filed a claim for refund within the applicable statute of limitations.

DISPOSITION

Respondent’s denial of the claim for refund is sustained.

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Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

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KL
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Keith T. Long
Administrative Law Judge

DocuSigned by:
Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

Date Issued: 3/24/2021