

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 20086442  
**W. KELLER** )  
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**OPINION**

Representing the Parties:

For Appellant: W. Keller

For Respondent: Jean M. Cramer, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Keller (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$6,734.16 for the 2013 taxable year.

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

**ISSUE**

Was appellant’s claim for refund timely?

**FACTUAL FINDINGS**

1. Appellant resided in California in 2012 and filed a 2012 California Resident Income Tax Return with a California address (2012 address). Appellant did not reside in California and did not earn California source income in 2013.
2. FTB received information indicating that appellant paid mortgage interest on a California residence during 2013. Based on that information, FTB sent appellant a Request for Tax Return on February 4, 2015. FTB mailed the document to appellant’s 2012 address.
3. Appellant did not respond, and on April 6, 2015, FTB sent appellant a Notice of Proposed Assessment (NPA). The NPA was sent to appellant’s 2012 address. When appellant did not respond to the NPA within 30 days, the NPA became final.

4. On August 26, 2015, FTB sent appellant an Income Tax Due Notice. On October 2, 2015, FTB sent appellant a Final Notice Before Levy and Lien (Final Notice). Both notices were sent to appellant's 2012 address.
5. On November 18, 2015, FTB discovered an address for appellant in Frederick, Maryland. Appellant confirmed the Frederick, Maryland address, using FTB's electronic system, on January 12, 2016.
6. On November 25, 2015, FTB sent a copy of the Income Tax Due Notice to appellant at the Frederick, Maryland address. On January 8, 2016, FTB sent a copy of the Final Notice to appellant at the Frederick, Maryland address.
7. On May 25, 2016, FTB issued to Wells Fargo Bank an Order to Withhold Personal Income Tax (Order). The Order listed appellant's name and address, referred to the 2013 taxable year, and required Wells Fargo Bank to withhold and transmit a balance due of \$6,734.16. The same day, FTB sent a copy of the Order to appellant at the Frederick, Maryland address. The Order stated the amount due and the taxable year.
8. The Order required Wells Fargo Bank to "Notify the taxpayer [appellant] and any other person listed on the account or accounts that you are withholding funds according to this order ....."
9. On June 21, 2016, Wells Fargo Bank remitted \$6,734.16 to FTB.<sup>1</sup> The amount levied matched the amount on the Order, and satisfied appellant's 2013 final liability, as assessed by FTB.
10. On March 15, 2019, after appellant's mother passed, appellant filed a 2013 California non-resident income tax return, claiming no California tax was owed, and requesting a refund of the funds remitted by Wells Fargo Bank in June 2016.
11. FTB denied appellant's claim for refund and informed appellant that the statute of limitations to obtain a refund had expired. This appeal followed.

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<sup>1</sup> Appellant claims that the funds were withheld from appellant's mother's bank account. However, the ownership of the bank account is not an issue before us on this claim for refund. Appellant's name was properly listed in the Order, and the bank remitted the funds pursuant to that Order. We have no evidence showing the account holder(s) on the levied account, and we make no determination as to the propriety of Wells Fargo Bank's actions.

## 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 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.) There is no reasonable cause or equitable basis for suspending the statute of limitations. (*U. S. v. Brockamp* (1997) 519 U.S. 347; *Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.) The language of the statute of limitations is explicit and must be strictly construed. (*Appeal of Benemi Partners, L.P., supra.*) 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. (*Ibid.*) This is true even when it is later shown that the tax was not owed in the first place. (*Ibid.*) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Ibid.*)

Appellant filed a 2013 tax return claiming a refund on March 15, 2019. Appellant did not file a timely 2013 return, so the first limitations period does not apply. The due date of the 2013 tax return was April 15, 2014, so under the four-year statute of limitations, appellant's claim for refund was due by April 15, 2018. Due to FTB's collection actions, a payment of \$6,734.16 was credited to appellant's 2013 tax account on June 21, 2016. Thus, under the one-year statute of limitations, appellant's claim for refund was due by June 21, 2017. Because appellant's March 15, 2019 claim for refund was filed after the expiration of each of these statutory periods, the claim for refund must be denied.

Appellant contends that he did not receive the original notices and was unaware of FTB's proposed assessment because appellant no longer resided at the 2012 address.<sup>2</sup> Although appellant states that he moved away from California in 2012, he filed a California resident return for the 2012 taxable year using a California address and did not update FTB with a new address

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<sup>2</sup> We note that appellant did not reside in California and had no California source income for 2013 and thus, had no California tax liability. Appellant had moved away from California in 2012 but filed taxes for that year using a California address. However, those facts have no bearing on whether the statute of limitations to claim a refund had passed, which is the only thing at issue here.

until January 2016. It wasn't until November 2015 (after the NPA became final) that FTB received information of appellant's Frederick, Maryland address (which appellant confirmed) and thereafter began issuing notices using the Frederick, Maryland address.

While appellant may not have received the initial request and NPA, he should have received the later notices that were sent to his updated address in Frederick, Maryland, including the following two notices: (1) on November 25, 2015, FTB sent a copy of the Income Tax Due Notice to appellant; and (2) on January 8, 2016, FTB sent a copy of the Final Notice to appellant. FTB issued its Order which stated the amount FTB believed appellant owed for 2013 (\$6,734.16). FTB sent a copy of that Order to appellant on May 25, 2016, again using the Frederick, Maryland address.

Appellant asserts that due to the wrongful action of FTB in levying appellant's mother's bank account, appellant was unable to determine the basis for the levy until appellant's mother passed in 2019, which was after the expiration of the statute of limitations. Appellant alleges that due to privacy concerns neither FTB nor Wells Fargo Bank would provide information regarding the Wells Fargo Bank account levy.<sup>3</sup> Because FTB would not give the requested information to the person requesting the information, appellant alleges that FTB is responsible for his delay in seeking a refund prior to the expiration of the statute of limitations. Appellant's arguments call for fairness and equity in resolving appellant's claim for refund. However, we have no authority to equitably toll the statute of limitations. (*Appeal of Benemi Partners, L.P.*, *supra.*) The statute must be strictly construed even if the tax was collected erroneously, illegally, or wrongfully. (*Ibid.*)

Appellant may not have received the original notices sent to the 2012 address shown on appellant's 2012 tax return. Nevertheless, it is more likely than not that appellant received four other notices sent to the correct, Frederick, Maryland address (Income Tax Due Notice, Final Notice, Order to Withhold, Notice of Levy sent by Wells Fargo Bank). Nothing in our record indicates that appellant took steps to ascertain why FTB was billing him for 2013. Furthermore, when Wells Fargo Bank levied the account for \$6,734.16 (the exact amount on the Order sent to appellant), it was required by the Order to send a copy to appellant and to any other person listed on the account. Whether or not the account was in appellant's mother's name or both appellant's

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<sup>3</sup> It is unclear who requested the information (appellant or someone operating under authority of appellant's mother's power of attorney) and whether appellant's own information was requested or his mother's tax or bank account information.

and his mother’s names, appellant would have received notice of the levy and could have matched it against the amount in the Order to see that the account was levied to satisfy appellant’s 2013 tax liability (as stated by FTB in its Order), within sufficient time to file a claim for refund prior to the expiration of the statute of limitations.

Notwithstanding the fact that appellant’s tax was erroneously paid and not owed in the first place, we must nevertheless find that appellant is not entitled to a refund of taxes paid for 2013 due to the expiration of the statute of limitations.

HOLDING

Appellant’s claim for refund was not timely.

DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Elliott Scott Ewing  
Administrative Law Judge

DocuSigned by:  
  
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Sheriene Anne Ridenour  
Administrative Law Judge

Date Issued: 3/17/2021