OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 20076320
JACQUELINE MAIRGHREAD PATTERSON TRUST	)

OPINION

Representing the Parties:

For Appellant: Lauren Hassing-Patterson, Trustee

For Respondent: Gi Jung Nam, Tax Counsel

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19324, appellant Jacqueline Mairghread Patterson Trust, by and through its trustee, appeals respondent Franchise Tax Board's action in denying appellant's claim for refund of $3,642 for tax year 2014. Appellant waived the right to an oral hearing, and therefore we decide this matter based on the written record.

ISSUES

1. Whether appellant's claim for refund is barred by the statute of limitations, and if not, whether appellant is entitled to a refund of its real estate withholding for tax year 2014.
2. Whether the Office of Tax Appeals (OTA) has jurisdiction to decide appellant's claim that respondent allegedly violated the California Taxpayers' Bill of Rights.

FACTUAL FINDINGS

1. In April 2014, appellant was a seller in a real estate transaction commonly referred to as a "1031 Exchange" and received sales proceeds of $200,683, which represented boot.[1] The withholding agent withheld $3,642 from appellant's allocable sales proceeds. The

[1] Boot is defined as the money, debt relief, or the fair market value of other property received by the seller in an exchange in addition to replacement property. Although a 1031 Exchange allows for deferral of gain or loss, any boot received in the exchange is taxable in the year received.

withholding agent remitted this amount to respondent via a check dated April 23, 2014,[2] with an FTB Form 593-V, Payment Voucher for Real Estate. Neither the check nor voucher included appellant's name or federal employment identification number (FEIN). The withholding agent did not submit to respondent an FTB Form 593, Real Estate Withholding Tax Statement (Form 593). Respondent did not contact the withholding agent about the missing Form 593.

2. On October 15, 2015, appellant timely filed its California Fiduciary Income Tax Return for tax year 2014. The return reported the $200,683 received as boot from the real estate transaction but did not report the $3,642 real estate withholding payment. Appellant submitted a payment of $1,068 with the return.
3. On November 19, 2019, per appellant's request, the withholding agent submitted Form 593 to respondent for tax year 2014, which reported the $3,642 that had been withheld from the real estate transaction. On November 22, 2019, appellant submitted a claim for refund of this withholding payment.[3]
4. In March 2020, respondent denied the claim for refund, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellant's claim for refund is barred by the statute of limitations, and if not, whether appellant is entitled to a refund of its real estate withholding for tax year 2014.

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

[2] Although respondent states that it received the withholding payment on April 14, 2014, we note that the check in question was dated April 23, 2014. As discussed below, however, the specific date of remittance does not change our analysis.

[3] We note that on October 7, 2019, respondent sent to appellant a Notice of Action, which withdrew a Notice of Proposed Assessment that was unrelated to the issue in this appeal. Appellant states that around this time in October 2019, appellant first requested a refund of the amount at issue. There is no evidence, however, to support appellant's argument that it first requested a refund prior to November 22, 2019.

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 Benemi Partners, L.P.*, 2020-OTA-144P (*Benemi*).) "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." (*United States v. Dalm* (1990) 494 U.S. 596, 602 (*Dalm*).) Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. United States* (7th Cir. 1990) 896 F.2d 218, 222-223 (*Prussner*).)

In April 2014, as a result of a real estate transaction that involved what is commonly referred to as a "1031 Exchange," appellant received real estate proceeds, which represented boot. The withholding agent withheld $3,642 from appellant's allocable share of the sales proceeds. The withholding agent remitted this amount to respondent via check dated April 23, 2014, and included a voucher. The specific date of remittance is not relevant for our purpose because R&TC section 19002(c)(1) deems that the withholding payment date in this case is April 15, 2015. Specifically, for the purpose of determining the statute of limitations period, R&TC section 19002(c)(1) deems the last date prescribed for filing returns as the payment date of a withholding prescribed under Article 5 of R&TC D. 2, Pt. 10.2, Ch. 2 (commencing with R&TC section 18661). (See R&TC, § 18662(e).)

Appellant argues that the date of the overpayment is November 19, 2019, which represents the date when the withholding agent submitted Form 593 to respondent. Appellant points out that respondent did not credit the $3,642 withholding payment to appellant's tax account until November 19, 2019, and that this was the first day when the withholding appeared as an overpayment on its account. Appellant also argues that it was not eligible to file a refund claim until November 19, 2019, when appellant's account showed the overpayment. We disagree with these contentions.

The date Form 593 was filed or when the withholding was credited to appellant's tax account are irrelevant under R&TC section 19002(c)(1). "For purposes of computing the statute

of limitations on refund claims, the date of all withholding payments is deemed to be the original due date for filing the income tax return." (Cal. Code Regs., tit. 18, § 19002(d)(1).) This is true even if the withholding agent fails to remit the withholding payment to respondent: "If the tax has actually been withheld at the source, a credit or refund shall be made to the recipient of the income even though the tax has not been paid over to the Franchise Tax Board." (Cal. Code Regs., tit. 18, § 19002(a).) Moreover, as to Form 593, we are aware of only one scenario in which these withholding payments would be credited on a date other than the original due date for filing the income tax return: for purposes of the computation of interest and penalties imposed under R&TC section 18668. (See Cal. Code Regs., tit. 18, § 19002(d)(3).) But that is not the scenario before us.

Appellant received real estate proceeds in April 2014, from which the withholding agent withheld $3,642. Because the withholding agent withheld this amount, appellant was entitled to a credit or refund even if the withholding agent had failed to remit the withholding over to respondent. (Cal. Code Regs., tit. 18, § 19002(a).) This indicates that the date when a payment is officially "credited" to a taxpayer's account—for accounting purposes—is irrelevant. As indicated, R&TC section 19002(c)(1) deems that the withholding payment date in this case is April 15, 2015—regardless of whether the withholding payment was remitted to respondent before or after this date.

Our "current tax system is one that depends on taxpayers to be forthcoming, as they are expected to self-report their tax liability under the pains and penalties of perjury. It would stand to reason, therefore, that taxpayers might also be expected to be aware of potential changes and any possible overpayment to which they may be entitled." (Bowden, *Protective Claims for Refund: Protecting the Interests of Taxpayers and the IRS* (2004) 56 Me. L. Rev. 149, 159.) Here, appellant was involved in a "1031 Exchange" in April 2014. Appellant's tax return reported the $200,683 received as boot from this real estate transaction. This transaction did not come as a surprise. Appellant knew or should have known that the withholding agent withheld $3,642 from appellant's sales proceeds; after all, appellant did not receive the full $200,683 reported on its tax return. Yet, appellant neither reported this real estate withholding nor requested a credit or refund.

If appellant had reported the withholding, appellant would have been entitled to a refund. It may seem harsh that appellant is no longer entitled to this refund, but as cited above, the fact

that it is now "shown that the tax was not owed in the first place" is not the issue. (*Dalm*, *supra*, at p. 602.) The issue is the statute of limitations. And although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner*, *supra*, at pp. 222-223.) We realize that the withholding agent played a role in the facts at issue; specifically, when the withholding agent remitted a check and voucher to respondent, neither the check nor voucher included appellant's name or FEIN. But appellant's "untimely filing of a claim *for any reason* bars a refund . . . ." (*Benemi*, *supra*, italics added.)

Therefore, for the purpose of the statute of limitations period, regardless of the date Form 593 was filed or when the withholding was actually credited to appellant's tax account, appellant's withholding of $3,642 for the 2014 tax year is deemed to have been paid on April 15, 2015. Accordingly, under R&TC section 19306, the three deadlines imposed under the statute of limitations are as follows: (1) October 15, 2019 (four years from the return filing date); (2) April 15, 2019 (four years from the return due date without extension); and (3) April 15, 2016 (one year from date of withholding payment). (R&TC, § 19306(a).) The latter of these deadlines is October 15, 2019, and because appellant filed its claim for refund on November 22, 2019, the claim for refund is barred by the statute of limitations.

Issue 2: Whether OTA has jurisdiction to decide appellant's claim that respondent allegedly violated the California Taxpayers' Bill of Rights.

In 1988 the Legislature enacted a series of statutes collectively entitled the "California Taxpayers' Bill of Rights." (The Katz-Harris Taxpayers' Bill of Rights Act, Stats.1988, ch. 1573, § 2, p. 5668, enacting R&TC sections 21001 et seq. (Taxpayers' Bill of Rights).) Appellant argues that respondent violated the Taxpayers' Bill of Rights. Appellant's claim for refund dated November 22, 2019, and appellant's appeal letter made no mention of these allegations. Appellant first mentioned this alleged violation in a reply brief, respondent addressed this allegation in its own reply brief, and the parties' arguments surrounding this allegation is intertwined with the statute of limitations issue. Although the main issue concerns the statute of limitations, we think the arguments surrounding the alleged violation of the Taxpayers' Bill of Rights is a separate issue and requires a separate discussion.

The Taxpayers' Bill of Rights is administered by respondent and is applicable to the Personal Income Tax Law and the Corporation Tax Law. (R&TC, § 21003.) One of the provisions under the Taxpayers' Bill of Rights specifies that if respondent receives a payment

from a taxpayer and cannot associate the payment with the taxpayer, respondent "shall make reasonable efforts to notify the taxpayer of the inability within 60 days after the receipt of the payment." (R&TC, § 21025.)

On April 23, 2014, due to appellant's role as a seller in a real estate transaction, the withholding agent withheld $3,642 from appellant's allocable share of the sales proceeds and remitted this amount to respondent via check and voucher. Neither the check nor voucher included appellant's name or FEIN. Also, at this time, the withholding agent did not submit a Form 593 to respondent, which would have made the connection between appellant and the withholding amount. Thus, respondent did not have any information to identify appellant as the seller. Appellant argues that because there was nothing on the check or voucher to associate the $3,642 payment with appellant, respondent was required to contact the withholding agent in order to "make reasonable efforts to notify" appellant within 60 days. Respondent indicated that it associated the payment with the withholding agent and conceded that it did not contact the withholding agent about the missing Form 593.

Although the parties' make several compelling arguments about R&TC section 21025, we cannot take a position on this issue. The relief for violations of the Taxpayer's Bill of Rights is prescribed by statute. The Taxpayers' Bill of Rights specifies the type of relief that respondent may grant to a taxpayer (R&TC, § 21004); it specifies that "[n]o other entity may participate in the grant or denial of relief pursuant to this section" (R&TC, § 21004(d)); and it also specifies that an aggrieved taxpayer, under specific circumstances, may bring an action for damages in superior court (R&TC, § 21021(a)), including actual damages and litigation costs (R&TC, § 21021(b)). There appears to be only one provision in the Taxpayers' Bill of Rights that refers to the relief that may be granted in an administrative appeal: R&TC section 21013 deals with reimbursement claims for reasonable fees and expenses related to an administrative appeal. Thus, the Taxpayers' Bill of Rights does not grant OTA jurisdiction to decide matters based on an alleged violation of R&TC section 21025.

Furthermore, OTA's Rules for Tax Appeals do not indicate that OTA has jurisdiction to decide matters based on an alleged violation of R&TC section 21025. (Cal. Code Regs., tit. 18, §§ 30101, 30701-30707.) The only reference in OTA's Rules for Tax Appeals to a statute from the Taxpayers' Bill of Rights is to reimbursement claims under R&TC section 21013. (Cal. Code Regs., tit. 18, §§ 30701-30707.) In other words, except for reimbursement claims

under R&TC section 21013, OTA does not have jurisdiction to hear matters based on alleged violations of the Taxpayers' Bill of Rights. (See also Cal. Code Regs., tit. 18, § 30104(d).) The appeal before us, however, does not concern a reimbursement claim. Therefore, we lack jurisdiction to decide appellant's claim under R&TC section 21025.

HOLDINGS

1. Appellant's claim for refund is barred by the statute of limitations.
2. OTA lacks jurisdiction to decide appellant's claim under R&TC section 21025.

DISPOSITION

We sustain respondent's denial of appellant's claim for refund.

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Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 4/6/2021