

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
P. CREWSE

) OTA Case No. 20127037
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OPINION

Representing the Parties:

For Appellant: Phillip Henke, Enrolled Agent

For Respondent: Anne Mazur, Program Specialist III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Crewse (appellant) appeals an action by Franchise Tax Board (respondent) denying appellant’s claims for refund of \$6,537.42 for the 2009 tax year, \$7,722.84 for the 2010 tax year, and \$1,333.93 for the 2012 tax year.

Appellants waived his right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Whether appellant’s claims for refund for the 2009, 2010 and 2012 tax years (the tax years at issue) are barred by the statute of limitations.¹

FACTUAL FINDINGS

1. Appellant did not timely file California income tax returns for the tax years at issue.

Tax Year 2009

2. Respondent issued a Request for Tax Return for the 2009 tax year but did not receive a timely response.

¹The amount on appeal also includes amounts that appellant paid for the collection cost recovery fee for the tax years at issue. However, appellant makes no argument for relief from the imposition of this fee. We also find no reason to grant relief. Consequently, respondent’s imposition of the collection cost recovery fee is upheld, and we will not discuss this issue further.

3. Based on mortgage interest information available to respondent, respondent estimated appellant's income and issued a Notice of Proposed Assessment (NPA).
4. Appellant did not respond to the 2009 NPA, and the proposed liability therefore became final. After respondent received no payment for the balance due on the final liability, respondent took collection action.
5. Respondent imposed a collection cost recovery fee.
6. Respondent's collection action resulted in the satisfaction of appellant's 2009 tax year liability on April 15, 2013.

Tax Year 2010

7. Respondent also issued a Request for Tax Return for the 2010 tax year, and appellant did not respond. Respondent issued an NPA, which included an estimate of appellant's income based on mortgage interest information available to respondent for appellant's 2010 tax year.
8. Appellant did not respond to the 2010 NPA, and the proposed liability therefore became a final liability. Appellant also made no payments on his 2010 tax year liability, so respondent initiated collection action and imposed a collection cost recovery fee. Respondent's collection action resulted in a satisfaction of appellant's balance, and the final payment occurred on June 25, 2014.

Tax Year 2012

9. Respondent issued a Request for Tax Return for the 2012 tax year, and appellant did not respond. Respondent issued an NPA, which contained an estimate of appellant's income using mortgage interest information available to respondent for 2012.
10. Appellant did not respond to the NPA, and the proposed assessment therefore became final. After appellant did not make payments to satisfy his 2012 tax year liability, respondent took collection action and imposed a collection cost recovery fee.
11. Respondent's collection actions resulted in the satisfaction of appellant's balance due on July 5, 2016.

Claims for Refund

12. On April 15, 2020, appellant filed California income tax returns for the tax years at issue. Appellant reported no taxable income and no tax due for each year. Respondent accepted appellant's returns as filed.
13. Also on April 15, 2020, appellant submitted claims for refund for the tax years at issue. Appellant requested a refund of all taxes, interest and penalties paid prior to the filing of his income tax returns.
14. Respondent acknowledged that appellant owed no tax for the tax years at issue but denied appellant's claims for refund on the grounds that the statute of limitations barred allowance of the claims.

DISCUSSION

R&TC section 19306(a) provides, in part, that no refund shall be allowed after a period ending four years from the date the return was filed (if filed within the time prescribed by R&TC section 18567), four years from the last date prescribed for filing the return (determined without regard to any extension of time for filing the return), or one year from the date of the overpayment, whichever is later, unless before the expiration of the period, the taxpayer files a refund claim. The language of the statute is explicit and must be strictly construed. (*Appeal of Cornbleth*, 2019-OTA-408P.) The taxpayer has the burden of proof to show that he is entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) A taxpayer's failure to file a claim for refund, for whatever reason, within the statutory period bars him or her from doing so at a later date. (*Appeal of Benemi Partners, LP*, 2020-OTA-144P.) Federal courts have stated that fixed deadlines may appear harsh because such deadlines can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223 [citing *U.S. v. Locke* (1985) 471 U.S. 84; *U.S. v. Boyle* (1985) 469 U.S. 241, 249].)

Here, it is undisputed that appellant filed his claims for refund after the expiration of the applicable time periods under the applicable statute of limitations. Appellant requests that we allow his claims for refund to proceed "regardless of the statute of limitations." He argues that we should allow his claim because respondent's initial assessment was based on an income estimate, and therefore unfair. However, there is no provision under the law that would allow us

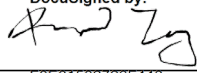
to disregard the statute of limitations based on unfairness, perceived or otherwise. Rather, statutes governing claims for refund must be strictly enforced. (*Kuykendall v. State Bd. of Equalization* (1994) 22 Cal.App.4th 1194.) We understand the perception of unfairness here; yet, any perceived unfairness is redeemed by the clarity of the legal obligation imparted by the clear deadlines to file a claim for refund, and we are legally obligated to apply such deadlines. (*Prussner v. U.S., supra*, 896 F.2d at pp. 222-223.) We find no other basis that would allow us to overturn respondent’s disallowance of appellant’s claims for refund for the tax years at issue.

HOLDING

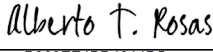
Appellant’s claims for refund for the tax years at issue are barred by the statute of limitations.

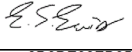
DISPOSITION

Respondent’s actions are sustained in full.

DocuSigned by:

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Richard Tay
Administrative Law Judge

We concur:

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Alberto T. Rosas
Administrative Law Judge

DocuSigned by:

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Elliott Scott Ewing
Administrative Law Judge

Date Issued: 9/22/2021