

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
S. FONSECA

) OTA Case No. 20106754
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OPINION

Representing the Parties:

For Appellant: S. Fonseca

For Respondent: Jean M. Cramer, Tax Counsel IV

For Office of Tax Appeals: Steven Kim, Tax Counsel

R.TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Fonseca (appellant) appeals an action by respondent Franchise Tax Board (respondent) denying appellant’s claim for refund of \$8,567 in tax plus applicable interest for the 2007 tax year.

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

ISSUE

Whether appellant’s claim for refund is barred by the statute of limitations.

FACTUAL FINDINGS

1. On March 15, 2008, appellant timely filed a California personal income tax return for the 2007 tax year. Appellant remitted a timely payment when she filed her 2007 return.
2. Subsequently, respondent received information from the IRS showing it had revised appellant’s federal adjusted gross income (AGI).
3. On October 12, 2010, respondent issued appellant a Notice of Proposed Assessment (NPA) for the 2007 tax year based on the federal adjustments to the extent consistent with California law. The NPA increased appellant’s reported AGI for previously

- unreported pension/annuity income. The NPA proposed additional tax, plus interest.
4. Appellant did not timely protest the NPA, so the proposed assessment became final.
 5. On August 27, 2014, respondent approved appellant's request for an installment agreement. However, appellant did not make any payments pursuant to the installment agreement. After respondent sent monthly payment reminders and did not receive a response, respondent issued appellant a notice on October 27, 2014, indicating that respondent intended to terminate the installment agreement.
 6. On March 11, 2015, respondent initiated collection action to satisfy appellant's balance due.
 7. Respondent received payments resulting from its collection action on October 20, 2015, through December 13, 2016, which satisfied in full appellant's 2007 balance due.
 8. On January 20, 2020, appellant filed an amended California personal income tax return (Form 540X) for the 2007 tax year, which reported a tax due of zero. On the 2007 amended return, appellant stated that she filed the amended return "to correct that life insurance proceeds are not taxable." Respondent acknowledged receipt of the amended return, which it treated as a claim for refund because appellant fully paid her balance due.
 9. In a letter to appellant dated September 9, 2020, respondent denied appellant's claim for refund. Respondent stated that it did not receive the information requested in its June 2, 2020 letter and IRS information does not indicate that the IRS made any adjustments to appellant's federal AGI.
 10. Appellant timely filed this appeal.
 11. On appeal, respondent produced a copy of appellant's 2007 federal account transcript dated October 29, 2020. The account transcript shows that on February 8, 2010, the IRS assessed additional tax and an accuracy-related penalty, and that payments were received from credit transfers from other tax years.¹ The account transcript also shows that appellant filed a federal amended return for 2007, and that the IRS disallowed appellant's

¹ Appellant's balance was zero after the IRS wrote off the remaining balance due of \$15,595.50 on February 10, 2020. There is no explanation for the IRS's write-off; however, we note that the write-off occurred just over 10 years after the initial assessment. Internal Revenue Code section 6502 prevents the IRS from initiating collection action, a levy, or a proceeding in court to collect a taxpayer's liability after 10 years from the date of the assessment, and consequently, the IRS has written off a taxpayer's remaining liability after 10 years. (See also *Wolffing v. U.S.* (Fed. Cl. 2019) 144 Fed.Cl. 626.) We also note that the transaction code associated with the write off, code 608, relates to "statute expiration clearance to zero balance." (IRS, Transaction Codes Pocket Guide (Rev. 5-2012) p. 9.)

federal claim for refund shortly after. There is no indication on the federal account transcript that the IRS revised, cancelled, or modified the determination on which respondent based its assessment for the 2007 tax year.

DISCUSSION

A taxpayer must file a claim for refund within the applicable statute of limitations, a period of four years from the date a return was filed (if timely filed pursuant to an extension of time to file), four years from the last day to file the return (without regard to any extension of time to file), or one year after the date of the overpayment, whichever period expires later. (R&TC, § 19306(a).) Otherwise, the claim for refund is untimely and no credit or refund is allowed. (*Ibid.*) The taxpayer has the burden of proof to show that the claim is timely, and the taxpayer is entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

If the IRS makes a change or correction to any item of gross income or deduction, the taxpayer must report the federal change to respondent within six months after the date it becomes final. (R&TC, § 18622(a).) If the IRS makes or allows a change or correction, the taxpayer may file a claim for refund resulting from the adjustment within two years from the date of the final federal determination as defined in R&TC, section 18622, or within the period provided in R&TC, section 19306, whichever period expires later. (R&TC, § 19311(a)(1).) The date of the final federal determination is the date on which the IRS assesses a federal adjustment pursuant to Internal Revenue Code, section 6203, which provides that an assessment is made by recording a taxpayer's liability in accordance with the prescribed rules or regulation. (R&TC, § 18622(d).) As relevant here, an IRS account transcript is a valid record of assessment. (Rev. Rul. 2007-21, 2007-14 I.R.B. 865.)

There is no reasonable cause or equitable basis for suspending the statute of limitations. (See *U.S. v. Brockamp* (1997) 519 U.S. 347, 351-354 (no intent to apply equitable tolling doctrine to a federal tax statute of limitations).) The language of the statute of limitations is explicit and must be strictly construed. (*Kuykendall v. State Bd. Of Equalization* (1994) 22 Cal.App.4th 1194.) A taxpayer's untimely filing of a refund claim for any reason bars a refund even if the tax is alleged to have been erroneously, illegally, or wrongfully collected. (*U.S. v. Dalm* (1990) 494 U.S. 596, 602.) "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. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

Here, appellant filed her amended 2007 income tax return, which respondent treated as a claim for refund, on February 8, 2020. The four-year statute of limitations expired on April 15, 2012, since appellant's original due date for her 2007 return was April 15, 2008. Appellant's most recent payment for the 2007 liability occurred on December 13, 2016; thus, the one-year statute of limitations expired on December 13, 2017. Finally, there is no evidence that the IRS made any changes or corrections to appellant's federal AGI since it assessed additional tax on February 8, 2010, the date of the final federal determination. Therefore, the extended statute of limitations in the case of a final federal determination expired on February 7, 2012. Accordingly, appellant's claim for refund is barred by the statute of limitations and consequently, we need not discuss the merits of appellant's claim for refund.

HOLDING

Appellant's claim for refund is barred by the statute of limitations.

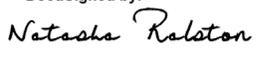
DISPOSITION

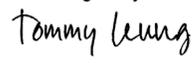
Respondent's denial of appellant's claim for refund is sustained.

DocuSigned by:

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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

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Natasha Ralston
Administrative Law Judge

DocuSigned by:

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Tommy Leung
Administrative Law Judge

Date Issued: 11/5/2021