

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20025852
T. GLASSER)
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OPINION

Representing the Parties:

For Appellant: Steven S. Glick
For Respondent: Peter Kwok, Tax Counsel IV
David C. Hunter, Tax Counsel IV
For Office of Tax Appeals: Neha Garner, Tax Counsel III

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Glasser (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$16,208 of additional tax and applicable interest for the 2013 tax year.

Office of Tax Appeals Administrative Law Judges Huy “Mike” Le, Andrew Wong, and Amanda Vassigh held an oral hearing for this matter via web-based conferencing on November 16, 2021. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

ISSUE¹

Whether FTB’s assessment is barred by the statute of limitations.

¹Originally, the issue appellant posed in this appeal was whether appellant is entitled to exclude capital gains derived from the disposition of inherited property in 2013 for California tax purposes. During the prehearing conference for this matter, appellant reminded us that he raised the statute of limitations as a second issue in his reply brief. This issue was accepted into the appeal. At the hearing, appellant conceded the issue regarding the taxation of the capital gains, and therefore there is no need for us to discuss that in our Opinion.

FACTUAL FINDINGS

1. Appellant signed his 2013 California Resident Income Tax Return (Form 540) on July 7, 2014, and filed it on July 15, 2014.
2. On April 2, 2018, FTB sent appellant a Notice of Proposed Assessment (NPA) reflecting additional tax plus interest.
3. Appellant protested the NPA on June 1, 2018, and on January 17, 2019, FTB sent its position letter affirming its proposed assessment and requested additional documentation.
4. When FTB did not receive a response from appellant, on January 14, 2020, FTB affirmed its NPA in a Notice of Action, which appellant then timely appealed.

DISCUSSION

In general, FTB must issue an NPA within four years of the date the taxpayer filed his or her California return. (R&TC, § 19057.) Returns filed before the original due date of the tax return are deemed as filed on the original due date. (R&TC, § 19066.) Since appellant filed his California personal income tax return on July 15, 2014, FTB had until July 15, 2018, four years from the filing date, to issue its NPA. FTB issued the NPA on April 2, 2018. Therefore, the NPA is not barred by any statute of limitations period because the NPA was mailed within four years of the date appellant's 2013 tax return was filed.

Appellant does not dispute that the NPA was mailed within four years of the return file date. Rather, appellant argues that the NPA issued by FTB does not suffice as an assessment of tax (and therefore FTB did not issue a tax assessment within the statute of limitations). Appellant argued at the hearing that the NPA was not a bill and that appellant was not “properly taxed during the four year period.”² Appellant provides no actual legal basis for his contention that the NPA does not suffice as a tax assessment. In his reply brief, appellant points to R&TC sections “1905 and 19066 (a) (b)” as the basis for this contention. It is unclear which code section appellant meant to refer to in listing “1905” as there is no R&TC section with that number. R&TC section 19066 deals with the timeliness of filing a tax return. The relevant code section that provides guidance on the statute of limitations for FTB's proposed assessment is R&TC section 19057.

² Glasser hearing transcript, page 9, lines 4 – 16.

R&TC section 19057 specifically refers to a “notice of a proposed deficiency assessment.” (R&TC, § 19057(a) & (b).) In other words, FTB’s NPA issued on April 2, 2018, is the “notice of a proposed deficiency assessment” as referenced and required by R&TC section 19057.


Appellant has the burden of showing that FTB’s 2013 proposed assessment is in error. (*Appeal of Gorin*, 2020-OTA-018P.) We conclude that appellant has failed to meet his burden of proving that the 2013 proposed assessment is barred by the statute of limitations.

HOLDING


FTB’s proposed assessment is not barred by the statute of limitations.


DISPOSITION

FTB’s action is sustained.

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Amanda Vassigh
Administrative Law Judge

We concur:

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Huy “Mike” Le
Administrative Law Judge

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Andrew Wong
Administrative Law Judge

Date Issued: 1/11/2022