

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
C. SHIREY

) OTA Case No. 18124036
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OPINION

Representing the Parties:

For Appellant: C. Shirey

For Respondent: Rachel Abston, Senior Legal Analyst

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045,¹ C. Shirey (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$4,411 for the 2014 tax year.²

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

ISSUE

Whether appellant timely filed a claim for refund for the 2014 tax year.

FACTUAL FINDINGS

1. On March 19, 2015, appellant filed a 2014 joint income tax return (Form 540) with her spouse.³ Respondent accepted the return as filed.
2. Subsequently, the IRS sent respondent information indicating that the IRS had adjusted appellant’s 2014 federal return.

¹ This matter was filed in response to a notice of action on a proposed assessment and was subsequently converted to an appeal from a denial of a claim for refund pursuant to R&TC section 19335.

² On appeal, based on respondent’s concessions and recalculations, the amount at issue is an overpayment of \$4,384.

³ Appellant’s spouse did not sign the appeal letter and thus, is not a party to this appeal.

3. Based on the IRS information, respondent issued a Notice of Proposed Assessment (NPA) to make corresponding adjustments to appellant's California taxable income. The NPA increased appellant's reported California taxable income by \$20,442, resulting in a proposed additional tax of \$1,902, plus interest.
4. Appellant protested the NPA. Respondent issued a Notice of Action, affirming the NPA.
5. This timely appeal followed.
6. On appeal, appellant filed an amended return (Form 540X) on June 15, 2019, claiming a refund of \$4,411.
7. Subsequently, respondent obtained appellant's federal account transcript, which showed that appellant also filed an amended federal return (Form 1040X) with the IRS on June 20, 2019. On August 31, 2020, the IRS reduced its assessment by \$1,944 and allowed additional federal withholding credit of \$1,655 based on appellant's amended return. After applying several payments and credits from other tax years to 2014, there was an overpayment of \$3,987.29. However, the IRS determined that appellant's claim for refund filed on June 20, 2019, was barred by the statute of limitations.
8. Respondent correspondingly has since adjusted appellant's California taxable income, which resulted in a revised additional tax of \$1,493. Additionally, respondent determined that appellant has additional California backup withholding credit of \$5,877 and applied the credit to the 2014 tax year, which results in an overpayment of \$4,384. However, respondent determined that because the overpayment is from California withholding credit (deemed paid on April 15, 2015), it is barred by the statute of limitations.

DISCUSSION

If there has been an overpayment of any liability imposed under the Personal Income Tax Law, by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayer and the balance shall be refunded to the taxpayer. (R&TC, § 19301(a).) The taxpayer has the burden of proof to show that he or she is entitled to a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

R&TC section 19306(a) provides, in part, that no credit or refund shall 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 within the extended filing period pursuant to an extension of time to file; (2) four years from the due date prescribed for filing the return (determined without regard

to any extension of time for filing the return); or (3) one year from the date of the overpayment. The language of the statute of limitations is explicit and strictly construed. (*Appeal of Khan*, 2020-OTA-126P.) 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. (*Ibid.*)

Here, appellant filed the 2014 amended return on June 15, 2019, which respondent treated as a claim for refund. Because appellant filed the 2014 original return on March 15, 2015, appellant was required to file a refund claim no later than April 15, 2019, under the four-year statute of limitations, which is four years from the original due date for the 2014 return. Under the alternative one-year statute of limitations, appellant is entitled to a refund of any payments made between June 15, 2018, and June 15, 2019, which is one year from the filing of the 2014 amended return. However, appellant made no payments to respondent during this time period. Although appellant had additional California backup withholding credit of \$5,877 that respondent applied to the 2014 tax year, this amount is deemed paid on the due date of the return, which is April 15, 2015. (R&TC, § 19002(c)(1).) As such, appellant's claim for refund is untimely.

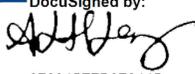
If a change or correction is made or allowed by the IRS, then another statute may apply. R&TC section 19311 provides that a taxpayer has the later of the general statute of limitations period or two years from the date of the final federal determination to file a claim for refund resulting from a federal adjustment or change. Here, appellant's federal account transcript shows that after appellant filed the federal amended return, the IRS reduced appellant's tax assessment by \$1,944 on August 31, 2020. Appellant filed her claim for refund on June 15, 2019, before the IRS adjusted appellant's tax assessment, and thus, the claim for refund did not result from a federal adjustment or change and the statute of limitations provided for in R&TC section 19311 does not apply here.

HOLDING

Appellant did not timely file a claim for refund for the 2014 tax year.

DISPOSITION

Respondent’s action is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

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Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 5/31/2022