

3. On March 1, 2020, appellants filed an amended 2012 California return which, among other adjustments, revised their itemized deductions to \$387,808 and reported no taxable income. The increase in appellants' reported itemized deductions was from a claimed casualty loss of \$288,168, shown on their attached amended 2012 federal return. Appellants explained on their attached amended 2012 federal return that the casualty loss was from fraudulent Ponzi schemes from 2008 to 2018 that is being "carried back per IRS Rev. Proc. 2011-58." On their amended 2012 California return, appellants requested a \$382 refund.
4. FTB sent a letter to appellants, informing them that it received their amended 2012 California return and treated their amended 2012 California return as a claim for refund. FTB explained in the letter that the information it received from the IRS showed a total federal itemized deduction of \$70,219 and, excluding \$8,054 of state and local taxes paid, that appellants' allowable California itemized deduction amount was therefore \$62,165. Based on the IRS information, FTB did not process appellants' amended 2012 California return. FTB requested that appellants send a copy of a revised IRS report if the IRS accepted a federal taxable income amount less than the information FTB had received from the IRS. After appellant failed to timely respond to FTB's request, FTB denied appellants' claim for refund for the 2012 tax year.
5. This timely appeal followed.

DISCUSSION

If there has been an overpayment of any liability imposed under the Personal Income Tax Law by taxpayers for any year for any reason, the amount of the overpayment may be credited against any amount due from the taxpayers and the balance shall be refunded to the taxpayers. (R&TC, § 19301(a).) Taxpayers have the burden of proof to show that they are 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 filed within the extended due date; (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.) The taxpayers' failure to

file a claim for refund, for whatever reason, within the statutory period bars them from receiving the refund at a later date. (*Ibid.*)

Here, because appellants filed a timely 2012 return, appellants were required to file a refund claim no later than April 15, 2017, which is four years from the date the return was due. Under the alternative one-year statute of limitations, appellants were required to file the refund claim no later than October 7, 2017, which is one year from appellants' latest payment of \$1,061 to FTB. However, appellants filed their refund claim on March 1, 2020, which is after both deadlines. Accordingly, because appellants did not timely file a refund claim for 2012 under the four-year or one-year statute of limitation, appellants' refund claim is time-barred under R&TC section 19306.

Appellants contend that the Internal Revenue Code allows refund claims to be filed beyond the federal three-year statute of limitations period when the refund claim relates to fraud under IRC section 6511(d)(1). Appellants assert that in 2020, the Department of Justice charged and convicted major banks of fraud and RICO charges for market manipulation of the prices of precious metal futures contracts. Based on the documents provided, it appears that appellants purchased and sold shares of Direxion Daily Gold Miners Index Bull 3X Shares (Direxion).

It is noted that IRC section 6511(d)(1) does not in fact extend the statute of limitations for fraud as appellants contend, but extends the time for filing a refund when the refund relates to a debt that became worthless or when the refund relates to a loss from worthlessness of a security. This federal statute is similar to R&TC section 19312, which will be discussed instead.

R&TC section 19312 sets forth a seven-year statute of limitations for a refund claim for a bad debt loss (as defined under IRC section 166) or a worthless security loss (as defined under IRC section 166 or 165(g)). However, unlike its federal counterpart IRC section 6511(d), R&TC section 19312 does not extend the statute of limitations for net operating loss carrybacks.

Appellants have not shown that their claimed deductions satisfy IRC section 166 for bad debts or IRC section 165(g) for worthless securities. For example, appellants indicated on their amended return that they suffered losses during the span of 2010 through 2018, but they do not identify a fixed and identifiable event as required under IRC section 165(g) that indicates their Direxion shares became worthless in 2012. (See Treas. Reg. § 1.165-1(b).) Similarly on appeal, appellants do not identify a specific timeframe when their shares became worthless in 2012. Instead, appellants appear to be attempting to deduct net operating loss carrybacks. Appellants

noted on the amended 2012 California return that the claimed deduction was a casualty loss from fraudulent Ponzi schemes from 2008 to 2018 that was being “carried back per IRS Rev. Proc. 2011-58.” Because R&TC section 19312 does not extend the statute of limitations for net operating loss carrybacks and appellants did not specify when the debt became worthless, appellants are not entitled to the seven-year statute of limitations period.

Appellants also cite to Revenue Ruling 2009-9 (2009-14 I.R.B. 735), which deals with the tax treatment of theft losses under IRC section 165(e), and Revenue Procedure 2009-20 (2009-14 I.R.B. 749), which deals with a safe harbor for taxpayers who experience losses from fraudulent investment arrangements, as a basis to claim losses related to appellants’ investments in a purported Ponzi scheme.¹ IRC section 165(a) allows taxpayers to claim a deduction for losses sustained during the taxable year and not compensated by insurance or otherwise.² IRC section 165(c)(3) allows an individual a deduction for certain losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from theft or other listed situations. Any loss from theft is treated as sustained during the taxable year in which the taxpayers discover such loss. (IRC, § 165(e).) Treasury Regulation section 1.165-8(a)(2) clarifies IRC section 165 further by stating, “a theft loss is not deductible under section 165(a) for the taxable year in which the theft actually occurs unless that is also the year in which the taxpayer discovers the loss.” The cited statute and IRS guidance, however, do not allow the extension of the statute of limitations for theft loss, even if the purported loss was a result of a Ponzi scheme.

Appellants also cite to 18 United States Code (U.S.C.) section 3293, which extends the statute of limitations for wire fraud under specific U.S. Code sections to 10 years, and 18 U.S.C. sections 1342 and 1343, which discuss wire fraud. These U.S.C. sections do not apply to California tax law.

Based on the forgoing, there is nothing in appellants’ cited federal authority or California law that would extend the statute of limitations for allowing a refund for California purposes for the 2012 tax year.

¹ In appellants’ amended return, appellants cite to Revenue Procedure 2011-58 (2011-50 I.R.B. 849), which modifies Revenue Procedure 2009-20 to permit taxpayers to invoke safe harbor even if a lead figure of Ponzi scheme had died before being charged.

² R&TC section 17201(a) incorporates by reference Internal Revenue Code (IRC) section 165, except as otherwise provided.

HOLDING

Appellants did not timely file a claim for refund for the 2012 tax year.

DISPOSITION

FTB’s action denying the claim for refund is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

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Asaf Kletter
Administrative Law Judge

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