

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 19085180  
R. WILKINSON AND )  
L. FUJII )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Phillip Johnson, Tax Assistance Appeals Program (TAAP)<sup>1</sup>

For Respondent: Eric R. Brown, Tax Counsel III  
Eric Yadao, Tax Counsel IV

For Office of Tax Appeals: Matthew McDermott, Graduate Student Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Wilkinson and L. Fujii (appellants) appeal an action by Franchise Tax Board (respondent) denying appellants’ claims for refund of \$680 for the 2011 tax year; \$1,057 for the 2012 tax year; and \$1,075 for the 2013 tax year.

Office of Tax Appeals Administrative Law Judges Sara A. Hosey, Teresa A. Stanley, and Andrea L.H. Long held an oral hearing for this matter in Sacramento, California, on October 18, 2022. At the conclusion of the hearing, the record was closed, and this matter was submitted for a written opinion.

**ISSUE**

Whether appellants filed timely claims for refund for tax years 2011, 2012, and 2013.

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<sup>1</sup> Appellants filed their opening brief. TAAP representative Mounia Boukhalfa filed appellants’ reply brief and TAAP representative Jonathon Dean filed appellants’ supplemental brief.

### FACTUAL FINDINGS

1. On April 15, 2012, appellants timely filed their 2011 California tax return and reported an overpayment of tax.
2. On June 13, 2013, appellants timely filed their 2012 California tax return within the automatic 6-month extension period. Appellants reported an overpayment of tax.
3. On February 15, 2014, appellants timely filed their 2013 tax return and reported an overpayment.
4. On March 15, 2019, appellants filed an amended tax return for each of the 2011, 2012, and 2013 tax years to exclude appellants' erroneous inclusion of social security benefits. Appellants sought a refund of \$680, \$1,057, and \$1,075 on their 2011, 2012, and 2013 returns, respectively. Respondent treated the amended returns as claims for refund.
5. Respondent denied appellants' claims for refund for the 2011, 2012, and 2013 tax years maintaining that the claims were time barred under the respective statute of limitations for each year.
6. This timely appeal followed.

### DISCUSSION

R&TC section 19306(a) provides 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 filed within the extended filing period; (2) four years from the due date of the return, without regard to extensions; or (3) one year from the date of the overpayment. For purposes of the one-year statute of limitations for refund claims, any tax deducted and withheld during any calendar year is deemed to have been paid on the filing deadline for that tax year. (R&TC section 19002(c)(1).) The language of R&TC section 19306 is explicit and must be strictly construed, without exception. (*Appeal of Cornbleth*, 2019-OTA-408P.) The taxpayers' failure to file a claim for refund within the statute of limitations, even when it is later shown that the tax was not owed in the first place, bars them from later receiving a refund. (*Appeal of Estate of Gillespie*, 2018-OTA-052P; *U.S. v. Brockamp* (1997) 519 U.S. 347.) Fixed deadlines may appear harsh because they can be missed, but the resulting occasional harshness is redeemed by the clarity of the legal obligation imparted. (*Appeal of Khan*, 2020-OTA-126P.)

Here, appellants filed an amended 2011 return, which respondent treated as a claim for refund. Because appellants timely filed the original 2011 return, they were required to file a refund claim no later than April 15, 2016, which is four years from the original due date of the return. Under the alternative one-year statute of limitations, appellants were required to file the refund claim no later than April 15, 2013, which is one year from the date appellants' withholdings for 2011 are deemed paid.

Appellants filed an amended 2012 return, which respondent treated as a claim for refund. Because appellants timely filed the original 2012 return within the extended due date, they were required to file a refund claim no later than June 13, 2017, which is four years from the date the return was filed. Under the alternative one-year statute of limitations, appellants were required to file the refund claim no later than April 15, 2014, which is one year from the date appellants' withholdings for 2012 are deemed paid.

Appellants filed an amended 2013 return, which respondent treated as a claim for refund. Because appellants timely filed the original 2013 return, they were required to file a refund claim no later than April 15, 2018, which is four years from the original due date of the return. Under the alternative one-year statute of limitations, appellants were required to file the refund claim no later than April 15, 2016, which is one year from the date appellants' withholdings for 2014 are deemed paid.

Appellants did not submit amended 2011, 2012, and 2013 returns until March 15, 2019, which is after the statutes of limitations for all tax years at issue.

Appellants contend that they are entitled to their claims for refund because they relied on alleged oral advice from respondent's employee that social security benefits income was not deductible from California's calculation of taxable income. Generally, equitable estoppel may be raised as a defense against the government only in rare and unusual circumstances and when its application is necessary to prevent manifest injustice. (*Appeal of Sedillo*, 2018-OTA-101P.)

It is clear from precedential California opinions that the doctrine of equitable tolling does not apply to the statute of limitations provisions of R&TC section 19306. (*Appeal of Estate of Gillespie, supra*; *Appeal of Meek* (2006-SBE-001) 2006 WL 864344.) California follows the reasoning in *U.S. v. Brockamp, supra*, 519 U.S. at 352, which analyzed IRC section 6511, the federal statute of limitations, reasoning that "Section 6511's detail, its technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of

exceptions, taken together, indicate...that Congress did not intend courts to read other unmentioned, open-ended, ‘equitable’ exceptions into the statute that it wrote.” (See also *Appeal of Jacqueline Mairghread Patterson Trust*, 2021-OTA-187P; *Appeal of Benemi Partners, L.P.*, 2020-OTA-144P.)

Federal courts have uniformly held that the holding in *Appeal of Brockamp, supra*, 519 U.S. 347, also extends to the doctrine of estoppel. That is, equitable estoppel cannot toll the statute of limitation in tax refund cases. (*Danoff v. U.S.* (C.D.Cal. 2004) 324 F.Supp.2d 1086, 1099, *affd.* (9th Cir. 2005) 135 Fed.Appx. 950 [“courts uniformly have held that equitable principles, including the doctrine of equitable estoppel, cannot toll statutes of limitation in tax refund suits”]; see also *Dickow v. U.S.* (1st Cir. 2011) 654 F.3d 144, 151 [“[Taxpayer’s] equitable estoppel claim fails because § 6511 is not subject to equitable exceptions under the Supreme Court’s decision in *Brockamp* .....”]; *Computervision Corp. v. U.S.* (Fed.Cir. 2006) 445 F.3d 1355, 1368 [“actions of regulatory authorities cannot either extend the statute of limitations under section 6511 by equitable tolling or create an estoppel against the government.”]). Therefore, a defense of equitable estoppel is inapplicable in this instant appeal.

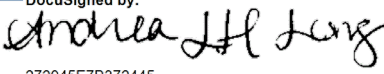
Appellants’ argument that respondent’s failure to notify them that they were erroneously including social security income as taxable income amounts to gross negligence, because it was an error that should have been obvious to respondent, is also unavailing. Respondent has no duty to discover overpayments made by taxpayers (*Appeal of Cervantes* (74-SBE-029) 1974 WL 2844), or to inform taxpayers of the time within which a claim for refund must be filed (*Appeal of Matthiessen* (85-SBE-077) 1985 WL 15856). In addition, the Office of Tax Appeals has no authority to grant relief except where the law specifically allows. (*Appeal of Estate of Gillespie, supra.*)

HOLDING

Appellants did not file timely claims for refund for tax years 2011, 2012, and 2013.

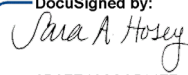
DISPOSITION

Respondent’s action is sustained.


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Andrea L.H. Long  
Administrative Law Judge

We concur:

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Sara A. Hosey  
Administrative Law Judge

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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 1/12/2023